AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

LESSONS LEARNED FROM THE 2004 PRESIDENTIAL ELECTION

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

JULY 24, 2008

Serial No. 110–199

Printed for the use of the Committee on the Judiciary

Available via the World Wide Web: http://judiciary.house.gov

LESSONS LEARNED FROM THE 2004 PRESIDENTIAL ELECTION

LESSONS LEARNED FROM THE 2004 PRESIDENTIAL ELECTION

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

JULY 24, 2008

Serial No. 110–199

Printed for the use of the Committee on the Judiciary

Available via the World Wide Web: http://judiciary.house.gov

U.S. GOVERNMENT PRINTING OFFICE

43–683 PDF WASHINGTON : 2009

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON THE JUDICIARY

JOHN CONYERS, JR., Michigan, *Chairman*

HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
JERROLD NADLER, New York
ROBERT C. "BOBBY" SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
WILLIAM D. DELAHUNT, Massachusetts
ROBERT WEXLER, Florida
LINDA T. SANCHEZ, California
STEVE COHEN, Tennessee
HANK JOHNSON, Georgia
BETTY SUTTON, Ohio
LUIS V. GUTIERREZ, Illinois
BRAD SHERMAN, California
TAMMY BALDWIN, Wisconsin
ANTHONY D. WEINER, New York
ADAM B. SCHIFF, California
ARTUR DAVIS, Alabama
DEBBIE WASSERMAN SCHULTZ, Florida
KEITH ELLISON, Minnesota

LAMAR SMITH, Texas
F. JAMES SENSENBRENNER, JR., Wisconsin
HOWARD COBLE, North Carolina
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
STEVE CHABOT, Ohio
DANIEL E. LUNGREN, California
CHRIS CANNON, Utah
RIC KELLER, Florida
DARRELL ISSA, California
MIKE PENCE, Indiana
J. RANDY FORBES, Virginia
STEVE KING, Iowa
TOM FEENEY, Florida
TRENT FRANKS, Arizona
LOUIE GOHMERT, Texas
JIM JORDAN, Ohio

PERRY APELBAUM, *Staff Director and Chief Counsel*
SEAN MCLAUGHLIN, *Minority Chief of Staff and General Counsel*

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES

JERROLD NADLER, New York, *Chairman*

ARTUR DAVIS, Alabama
DEBBIE WASSERMAN SCHULTZ, Florida
KEITH ELLISON, Minnesota
JOHN CONYERS, JR., Michigan
ROBERT C. "BOBBY" SCOTT, Virginia
MELVIN L. WATT, North Carolina
STEVE COHEN, Tennessee

TRENT FRANKS, Arizona
MIKE PENCE, Indiana
DARRELL ISSA, California
STEVE KING, Iowa
JIM JORDAN, Ohio

DAVID LACHMANN, *Chief of Staff*
PAUL B. TAYLOR, *Minority Counsel*

CONTENTS

JULY 24, 2008

Page

OPENING STATEMENTS

The Honorable Jerrold Nadler, a Representative in Congress from the State of New York, and Chairman, Subcommittee on the Constitution, Civil Rights, and Civil Liberties 1
The Honorable Trent Franks, a Representative in Congress from the State of Arizona, and Ranking Member, Subcommittee on the Constitution, Civil Rights, and Civil Liberties 2
The Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, Chairman, Committee on the Judiciary, and Member, Subcommittee on the Constitution, Civil Rights, and Civil Liberties 4

WITNESSES

Mr. J. Kenneth Blackwell, Ronald Reagan Distinguished Fellow, The Buckeye Institute for Public Policy Solutions
Oral Testimony 6
Prepared Statement 8
Mr. Daniel P. Tokaji, Associate Professor of Law and Associate Director, Election Law, The Ohio State University, Michael E. Moritz College of Law
Oral Testimony 58
Prepared Statement 60
Cleta Mitchell, Esq., Partner, Foley & Lardner, LLP
Oral Testimony 67
Prepared Statement 133
Ms. Gilda R. Daniels, Assistant Professor of Law, University of Baltimore School of Law
Oral Testimony 165
Prepared Statement 167
Mr. Hans A. von Spakovsky, Visiting Scholar, The Heritage Foundation
Oral Testimony 172
Prepared Statement 174
Mr. J. Gerald Hebert, Executive Director and Director of Litigation, The Campaign Legal Center
Oral Testimony 189
Prepared Statement 191

APPENDIX

Material Submitted for the Hearing Record 235

LESSONS LEARNED FROM THE 2004 PRESIDENTIAL ELECTION

THURSDAY, JULY 24, 2008

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE CONSTITUTION,
CIVIL RIGHTS, AND CIVIL LIBERTIES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 1:26 p.m., in room 2141, Rayburn House Office Building, the Honorable Jerrold Nadler (Chairman of the Subcommittee) presiding.

Present: Representatives Nadler, Davis, Wasserman Schultz, Ellison, Conyers, Scott, Watt, Franks, and Jordan.

Staff Present: David Lachmann, Subcommittee Chief of Staff; LaShawn Warren, Majority Counsel; Caroline Mays, Majority Professional Staff Member; and Paul Taylor, Minority Counsel.

Mr. NADLER. This hearing of the Subcommittee on the Constitution, Civil Rights, and Civil Liberties will come to order.

Without objection, the Chair is authorized to declare a recess of the hearing. We will now proceed to Members' opening statements. As has been the practice in the Subcommittee, I will recognize the Chairs and Ranking Members of the Subcommittee and of the full Committees to make opening statements. In the interest of proceeding to our witnesses and mindful of our busy schedules, I would ask that other Members submit their statements for the record.

Without objection, all Members will have 5 legislative days to submit opening statements for inclusion in the record.

The Chair now recognizes myself for 5 minutes for an opening statement.

Today's hearing looks at the way in which the Nation administers its elections, the way we go about ensuring the integrity of our elections, and the means we use to ensure that the right of all eligible voters to cast their votes, and have those votes counted in an environment that is free from intimidation, is protected.

Unfortunately, we have not always done a very good job administering our elections in a manner that we expect of other nations. If the result was solely disenfranchisement of large numbers of people, that would be bad enough. Unfortunately, we have now seen in the past two Presidential elections that the public no longer has confidence that our elections are truly fair and that the results are accurately reflected in the final vote tally. The former is a violation of our values, our laws, and our Constitution. The latter

threatens the very foundation of our Democracy. If the public cannot be assured that our elections are free and fair, the results rightly or not, will always be suspect. The outcome, especially in a close election, could lose its legitimacy. That would be catastrophic, not just for the individuals whose right to vote was lost or impaired but for the entire Nation.

Today this Subcommittee looks at some of the problems we have encountered in past elections, and we will explore possible solutions to those problems. It is unfortunate that the Federal agency charged with the administration of our election laws, especially the Voting Rights Act, which this Committee crafted and just extended 2 years ago, declined to send a witness today. It is absolutely imperative that this Committee ensure that the department is focused on threats to the right to vote and has a plan to meet those threats effectively.

The Election Assistance Commission, which Congress established as part of the Help America Vote Act, has provided a great deal of information and proposals on how to run our elections better. It would have been good to hear from the Department of Justice about those proposals, what the reaction of the voting section to those proposals is, and what steps the DOJ is taking to follow up. We will pursue these questions as well.

Serious flaws in an election cannot be dealt with after the fact. A person who is disenfranchised can never get that vote back. An election rendered suspect by voting rights violations will remain suspect. That is unacceptable, and I hope the other Members of Committee on both sides of the aisle will join me in demanding that DOJ, the Department of Justice, fully respond to our questions on these important matters.

We are joined today by the former Secretary of State of Ohio, Mr. J. Kenneth Blackwell, to discuss the very controversial election held in that State in 2004 when he was that State's chief election officers. Make no mistake, although the Ohio case has been closely examined and hotly debated over the last 4 years, it is far from unique. Many of the issues that arose in Ohio are symptomatic of problems encountered around the country.

Four years ago, Members of this Committee asked the then majority to conduct hearings into the 2004 elections. The majority at that time had other issues it deemed more important. Nonetheless, we must confront these problems and seek solutions even 4 years after the fact. At that time, Chairman Conyers conducted his own unofficial inquiry, including questions for Mr. Blackwell to which we never received a response. I hope we can conduct today a forward-looking and problem-solving hearing. We owe the voters no less.

I want to welcome our witnesses. I look forward to your testimony. And I must add at this point that we will have two panels today. The first one is sitting in front of us. And I look forward to hearing the testimony of all the witnesses.

I yield back the balance of my time.

I would now recognize for an opening statement our distinguished Ranking minority Member, the gentleman from Arizona, Mr. Franks.

Mr. FRANKS. Well, thank you, Mr. Chairman.

Mr. Chairman, voting is the life blood of a democracy.

There are no legitimate leaders in a democracy without legitimate elections. And as we begin this discussion today, I would like to draw everyone's attention to a letter that was sent earlier this year to the Nevada State Democrat party that I believe illustrates the challenges that are in many kinds of elections. I point to this letter simply because it illustrates the confusion that can occur and the doubt that can be generated when we either do not have a clear means of verifying legal voters or when existing voting laws appear to go unenforced.

This letter was sent by the Hillary Clinton for President campaign, and it requests an investigation into voter suppression regarding actions taken by the Obama Presidential Election campaign. Let me quote from that letter from the Clinton campaign.

The letter states: "The Clinton campaign wishes to bring to your attention information we have received evidencing a premeditated and predesigned plan by the Obama campaign to engage in systematic corruption of the party's caucus procedures. Compounding this blatant distortion of the caucus rules was an egregious effort by the Obama campaign to manipulate the voter registration process in its own favor, thereby disenfranchising countless voters."

They list caucus chairs obviously supporting Obama deliberately miscounted votes to favor Senator Obama; deliberately counted unregistered persons as Obama votes; deliberately counted young children as Obama votes. Many Clinton supporters were threatened with employment termination or other discipline if they caucused for Senator Clinton.

Now, it seems to me, of course, that depending on the facts of the case in each instance, these instances may constitute any number of serious violations of Federal elections laws.

And now I would like to, Mr. Chairman, read a letter that the Obama campaign sent around the same time to the Nevada Democrat party alleging that Clinton campaign workers are, "turning our supporters away by asking to see their IDs and telling them they aren't valid."

Now that is particularly unsettling since such abuse could be remedied if there were a single secure universally recognized and accepted voter ID. My own State of Arizona enacted just such a law.

Public support for secure voter ID remains very strong, according to Washington Times: "Support for the concept is overwhelming," said Scott Rasmussen. "More than three-fourths of Republicans supported showing identification, as did 63 percent of Democrats and Independents, 58 percent of Blacks, 69 percent of Whites and 66 percent of other ethnic or racial minorities backed the concept."

A recent survey conducted by the nonpartisan Congressional Research Service found that two-thirds of local election officials believed that voter identification requirements will make elections more secure. The recent experience under Indiana's voter ID law, which was recently upheld by the Supreme Court in an opinion that was offered by famously liberal Justice Stevens shows that such laws do not diminish voter turnouts. Rather they can increase voter turnout by giving legal voters the security of knowing that their vote will be counted and that it will not be negated by the

vote of someone voting illegally. Indeed, the recent elections in Indiana went very smoothly by all accounts.

I also want to point out that when the Indiana voter ID law was challenged by opponents in the Supreme Court, it turned out that the lead plaintiff in that case had been illegally registered to vote in two different States.

Now I know duel voting registrations can often be innocent mistakes, but they are mistakes nevertheless, and they can invite voting fraud by others, and they should be brought forward and corrected.

That the exploitation of gaps in the voting system to facilitate voting fraud is a problem today cannot be plausibly denied.

Just since our last hearing on this subject a few months ago, the New York Times reported that a Democratic district attorney in Alabama has called for a Federal investigation into voting irregularities there. And the Times article itself quotes several individuals who admit on the record that they have been paid for their vote and that the practice is "pretty common."

And a special investigations unit in Milwaukee issued a report that found evidence of illegal voting in which "persons had to commit multiple criminal acts in an effort to reach their ultimate goal of voting."

The same report concluded that "the reports of more ballots cast and voters recorded were found to be true." The report then states that the only reason prosecutions weren't pursued was because election records were so poorly maintained. The Supreme Court itself recognized the problem of voting fraud in its Crawford decision in April.

Mr. Chairman, it's important to all of us to know that, when we vote, that the process will be fair and just and accurate. I think that it not only lends great credence to our system, but it avoids some of the challenges that other countries have demonstrated, like Mexico, to where their entire elections are called into question because people do not have confidence in the system.

So, with those concerns in mind, I look forward to hearing from all of our witnesses today and to exploring what Congress can do to help maintain the integrity of the election process.

I want to thank all of our Nation's election officials, including Kenneth Blackwell, who so nobly and ably served the State of Ohio as Secretary of State.

Thank you, Mr. Chairman.

Mr. NADLER. I thank you.

I want to welcome our distinguished panel of witnesses today, at least our first panel of witnesses today. Before we begin, we have an opening statement by the distinguished Chairman of the full Committee, Mr. Conyers.

Mr. CONYERS. Thank you, Chairman Nadler and Ranking Member.

This is an important hearing, because we've had so much controversy about the appropriateness and fairness of our election process starting with the year 2000, where the Supreme Court intervened in a Presidential outcome for the first time in American history. Then we had 2004, in which we had a huge amount of con-

troversy following the outcome of the Ohio election vote, which determined the Presidency of the United States that year.

But in between those elections and even now, there were Federal elections that have been in controversy as well. And so it is important that we note Chairman Nadler's comment; we get little or no cooperation from the Department of Justice, the election section, where the security and confidence of the balloting process, the electoral process, is monitored and enforced.

First of all, we can't even get a witness here from that section from the Department of Justice. And that leads to people being suspicious about what's up. Will this process of disputed balloting continue on, or is this just an Attorney General that's preoccupied with other matters? Why can't we appreciate that in a year where we're going to have an acknowledged record turnout of new voters, we can't even get a representative from the Department of Justice to tell us what's happening?

So this lack of communication is very serious. And I'm very concerned that we're going to get the same kind of song and dance that frequently issues from the Department of Justice, namely, "we're on it; we've got people working on it; we're concerned; we're going to try to do a good job; do not worry." Whenever any complaints arise, everything will be okay.

Well, everything is not going to be okay because coming up on the back end of the problem is a lot different from being proactive and dealing with the problems that can easily be seen in advance.

The other question we're trying to get to the bottom of is, how much of the Department of Justice's resources are allocated to making sure that this is the fairest election we've had in many years? That we've got to find out as well.

And so it is with great enthusiasm that I look forward to the witnesses that are here. We note that the former Secretary of State of Ohio who lead the election process in that State is present with us voluntarily, and we appreciate that very much.

We're looking forward to the hearing.

And thank you, Chairman Nadler.

Mr. NADLER. Thank you, Mr. Chairman.

Mr. NADLER. Before we begin, it is customary for the Committee to swear in its witnesses. If you would please stand and raise your right hand to take the oath.

[Witnesses sworn.]

Mr. NADLER. Thank you.

Let the record reflect that the witnesses answered in the affirmative.

You may be seated.

Without objection, your written statements will be made a part of the record in their entirety. We would ask each of you to summarize your testimony in 5 minutes or less. To help you keep time, there is a timing light at the table. When 1 minute remains, assuming the system operates properly, the light will switch from green to yellow, and then to red when 5 minutes are up.

It is customary at this point for me to read the short biographies of the witnesses, of the first panel, but I don't seem to have them here. So when they arrive, we'll perhaps go into them at this point.

But our first witness is Mr. Kenneth Blackwell, who is the former Secretary of State of Ohio, as well as other things I would have mentioned had I had his biography here.

Mr. Blackwell.

TESTIMONY OF J. KENNETH BLACKWELL, RONALD REAGAN DISTINGUISHED FELLOW, THE BUCKEYE INSTITUTE FOR PUBLIC POLICY SOLUTIONS

Mr. BLACKWELL. Thank you, Mr. Chairman and good afternoon to you and Members of the Committee.

I am here today at the Committee's request to speak to the issues of or the issue of, Lessons Learned in the 2004 Election. I testify today in my capacity as a private citizen.

In my estimation and in that of most independent observers, Ohioans were well served by their State and local elections officials in 2004. I personally thank each of them for their exemplary service.

The State of Ohio received more than its fair share of attention during the long campaign leading to the November 2nd election of that year. With the prospect of a close contest for the State's 20 Electoral College votes, Ohioans experienced an unprecedented media blitz and an energetic set of drives to register voters, which produced nearly 1 million new voters.

As election day approached, attorneys from both sides were in position, combing Ohio's election rules for provisions that would help them and their associates and watching the process for errors that might inevitably occur.

Let me quote one succinct statement about that outcome: "Overall, Ohio has a good system. Like any system, if you scrutinize it enough, you're going to find weaknesses." This quote is fromDon McTigue, a Democratic lawyer who worked in the Secretary of State's Office in a previous Administration and who was deeply involved in the election and its aftermath.

I happen to agree with Mr. McTique. Overall, Ohio has a good system, and it performed under extraordinary stress. And yes, it has some weaknesses, and I have spoken to some of those in my prepared remarks that I have submitted for the record.

But, first, I am compelled to speak to the fabrications, the exaggerations that some who disliked the fact that their Presidential candidate lost Ohio keep repeating. Unlike Mr. McTigue, they dismiss evidence and simple explanations and the word of fellow Democrats when the intimidation or the intimation of some vast conspiracy to steal the election is so much more exhilarating.

Our 88 bipartisan County Boards of Elections provides the checks and balances that make it virtually impossible for either party to rig an Ohio election from the inside. They decide on the distribution ratios of voting equipment. They decide the location of polling stations. And they select the voting equipment used in their counties from a list of equipment certified by the Secretary of State's Office. All of these safeguards ensure that local concerns about access to polling stations and equipment are handled locally and that both parties have a say in the final decisions. The Secretary of State's Office collects and certifies the final outcome.

In sum, I do not believe that it is a good use of a Committee's time or my own to rehash the details of the most thoroughly vetted election in recent memory. But I did not want to miss this opportunity to give credit to the more than 50,000 Ohioans who worked hard to make the 2004 election one of the most fair and accessible in the State's history.

In my prepared remarks, I give you roughly nine lessons, eight lessons that were learned. Let me focus on one in my remaining few minutes, and that is the long lines in Franklin County. It is so important that we deal with this, because this is the imagery that has come to represent the entire election process in the State of Ohio.

Close elections and hotly contested issues mean big turnouts. Boards of Elections around the country and in Ohio use turnout figures or should use turnout figures from 2004 to better anticipate precinct-by-precinct demand on voting equipment. In Ohio, in Franklin County, we had too few voting machines to accommodate the demand that was a historic demand.

County Boards of Election are made up of Democrats and Republicans. In 2004, the chairman of the Franklin County Board of Election was African-American, a labor leader, a civil rights activist, and a Democrat. And they made a decision on the distribution of voting machines based on how many machines they had and historic data. Those considerations were insufficient for the record turn out, and we had long lines.

I must give them credit for accommodating a highly stressed system under those circumstances, but they did it, and let me say that there was a record turnout of African-American voters. There was a successful account of the vote in Franklin County, and I think it speaks to the local control and the bipartisan Boards of Elections that we have.

I know that there are those who would disagree, but that's what these sort of conversations are for.

Thank you very much.

[The prepared statement of Mr. Blackwell follows:]

PREPARED STATEMENT OF J. KENNETH BLACKWELL

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS & CIVIL LIBERTIES

HEARING ON "LESSONS LEARNED FROM THE 2004 ELECTION"
THURSDAY, JULY 24, 2008

1 PREPARED STATEMENT OF THE
2 HONORABLE J. KENNETH BLACKWELL

3 Good afternoon, Mr. Chairman. I am here today at the Committee's request to speak to the
4 issue of "Lessons Learned in the 2004 Election." I testify today in my capacity as a private
5 citizen.

6 The subject of this hearing is, as I understand it, the future. Although my service as Ohio's
7 chief elections officer from 1999-2007 puts me in a good position describe the lessons we
8 learned in Ohio before and after the 2004 election, the person who has the constitutional
9 responsibility to put those lessons into practice in 2008 is my successor as Secretary of State,
10 Jennifer Brunner. Any questions the Committee or its Members have about Ohio's current
11 policies should be directed to Secretary Brunner.

12 Ohio received more than its fair share of attention during the long campaign leading to the
13 election held on November 2, 2004. The prospect of a close contest for the state's 20 Electoral
14 votes focused worldwide media attention on Ohio before, during, and after the election.
15 Attorneys for the media, the political parties, independent candidates, and a variety of local,
16 state, and national interest groups kept Ohio's state and federal courts (and one in New Jersey)
17 busy both before and during the election. Disappointed partisans who know little to nothing
18 about the bipartisan political safeguards built into Ohio election laws have sought to discredit the
19 outcome by making baseless charges that have been thoroughly refuted by Ohio' major
20 newspapers, by the Democratic Chairman of the Franklin County Board of Elections, and by and
21 a variety of independent researchers.

22 In my estimation – and in that of most independent observers, Ohioans were well-served by
23 their state and local elections officials in 2004. I thank each of them here for their service.

24 Running an election is democracy in action. Just as in any other setting, perfection is
25 impossible. It takes thousands volunteers to get the polls open and closed on time. Although
26 Ohio's eighty-eight boards of county commissioners appropriate the money to pay most of the
27 costs of running elections, the "hands on" work of making elections clean, efficient, *and*

auditable is the responsibility of Ohio's bipartisan county boards of election. Our eighty-eight bipartisan county boards of election provide the checks and balances that make it virtually impossible for either party to rig an Ohio election "from the inside." They decide on the distribution ratios for voting equipment; they decide the location of polling stations; and they select the voting equipment used in their counties from lists of equipment certified by the secretary of state's office. They also count the ballots, validate provisional votes, and certify the vote tallies. County board of elections' staff members work hard together and with their counterparts around the state into the wee hours of the "mornings after" every election to run an honest election.

All of these local safeguards ensure that local concerns about access to polling stations and equipment are handled locally, and that *both* political parties have a say in the final decisions. The secretary of state's office collects and certifies the final outcome.

The dedicated professionals of the secretary of state's office also deserve special mention. The eyes of the world were on my office in Columbus on November 2, 2004. Observers from the United Nations visited our offices in Columbus to see us in action. From the precinct level to the solid wall of satellite trucks gathered in front of the Ohio State Capitol, the media were out in force and made no secret about their willingness to sue if they felt that access was too limited. Some did[1]. Internet users from around the world hit our website at a rate of more than 50,000 hits per hour at some of the peak hours after the polls closed.

And then there were the lawyers. Each candidate and party had teams of them around the state. So did the media, the Department of Justice, and just about every interest group that had a stake in that election. The Ohio Attorney General's Office and its Special Counsel litigated all around the state on my behalf to preserve the integrity of the voting process and to ensure voter access to the polls. At one point, I even went so far as to instruct my lawyer, then-Attorney General Jim Petro, to settle a case in which the Summit County Democratic Party had challenged a state law allowing challengers to question a voter's credentials at the polling station. He

[1] *See, e.g., American Broadcasting Companies, Inc. et al. v J. Kenneth Blackwell*, No. 1:04CV750, (U.S.D.C., S.D. Ohio) (media access to polling place within 100 feet of the flags at the entrance to the polling place); (Akron) *Beacon Journal Publishing Co., Inc. v Blackwell*, et al., No. 04-4313 (6th Circuit)(vacating order of the District Court allowing Beacon Journal reporters to be inside polling stations).

refused, arguing that his obligation was to defend the state's laws. Though I too thought the law was constitutional, I had to run an election to run and there was no way to resolve the important issues involved in that case on the eve of the election.[2]

In sum, I do not believe it is a good use of either the Committee's time, or my own, to rehash the details of the most thoroughly-vetted election held in recent memory, but I did want to take the time to give credit to the more than 50,000 Ohioans who worked hard to make the 2004 election one of the most fair and accessible in the state's history.

I will focus the remainder of my comments – as the Committee has requested – on the "lessons learned" during the 2004 election cycle that can be applied to the future. I have attached copies of additional studies, news articles, and other materials for the Committee's information.

LESSONS LEARNED IN OHIO -- 2004

1. **Close elections and hotly-contested issues mean big turnout.** ***Boards of Election around the country should use the record turnout figures from 2004 to better anticipate precinct-by-precinct demands on voting equipment.*** We learned a lot from the 2004 election. One of those lessons is that the length of lines is a function of the type of voting equipment used; the number of voting machines per precinct (which determines the maximum number of voters, per precinct, per machine); the availability of early voting and "no-fault" absentee ballots (which I discuss later in this statement); the political mood of the voters; voter interest in the candidates and ballot issues; and environmental factors like the weather. The Ohio Legislature, following my lead, imposed a ceiling on the maximum number of voters per machine statewide (1:175)[3].

   To put this number into context, let's consider the facts from the 2004 election[4]. In Cuyahoga County, Ohio's largest, voting machines were allocated on a uniform basis of one machine to 117 voters (1:117). Election Day figures showed that the average

[2] Ted Wedling, Blackwell tries to ban challengers at polls; Petro refuses," *Cleveland Plain Dealer,* Saturday, October 30, 2004.

[3] Section 514.03, Amended Substitute House Bill 66, 126th Ohio Legislature (June 30, 2005)

[4] Mark Naymik, "Delays at Polls Weren't a Scheme: Voting Machines Distributed Evenly," *Cleveland Plain Dealer,* Monday, January 17, 2005. Mr. Naymik's article includes a very useful – and informative – map of Cuyahoga County, and includes details concerning the precincts having the greatest number of voters per machine.

utilization of the machines was 70.5 votes per machine countywide.

The number of voters per machine in the City of Cleveland was actually lower than average than in the outlying suburbs (64 voters per machine in the City of Cleveland and 74 voters per machine in the outlying suburbs). The highest number of voters per machine in Cuyahoga County was 173 voters per machine.

The long lines in parts of Columbus that got so much attention were caused by a combination of unprecedented population growth in the City of Columbus and unprecedented voter turnout. Even those problems did not stop the Franklin County Democratic Party from taking control of the Board of County Commissioners for the first time in twenty years.[5] Late registrations by students in the Kenyon College precinct after the Knox County machines were allocated and programmed caused the long lines there.[6]

2. **It pays to be proactive and to use all available technologies to ensure that voters will know where and how to vote.** From October 27-October 29, 2004, I arranged for an unprecedented, and to my knowledge, unique effort to ensure that Ohioans knew where and how to vote in the 2004 elections. Using a recorded, interactive phone survey, I called 953,641 *urban* households. I asked whether the person who answered knew where there were supposed to vote. Depending on their answers, I gave them information about where get the information they needed. (The script is attached as an exhibit to this testimony.) The call ended with the following message:

> AS YOUR SECRETARY OF STATE, I WANT TO ENCOURAGE ALL REGISTERED VOTERS TO GO TO THEIR CORRECT VOTING LOCATION ON NOVEMBER 2ND AND VOTE. HELP ME MAKE YOUR VOTE COUNT BY GOING TO YOUR CORRECT VOTING LOCATION. MAKE YOUR VOTE COUNT, OHIO. THIS IS KEN BLACKWELL. THANK YOU FOR YOUR TIME. GOODBYE.

[5] Editorial, "A Fair – but Improvable – Election", *Call & Post* (Newspapers of Ohio), Thursday, December 2, 2004.

[6] See discussion at footnote 9 on pages 7-8 below.

a. Because most concerns that voters might not know their correct precinct are focused on Ohio's large, urban areas, we specifically targeted the following cities in this urban outreach effort:

Akron	75,840	homes called
Cleveland	186,042	homes called
Columbus	204,823	homes called
Cincinnati	221,390	homes called
Dayton	134,971	homes called
Toledo	82,213	homes called
Youngstown	48,362	homes called
Statewide	**953,641**	**homes called**

b. The response rates were significant and coverage far surpassed anything we could have accomplished with standard PSAs. Please consider the following.

Persons who:	**Message will reach:**
Watch 1- minute of TV in the targeted market in a day.	**12%** of all homes that have televisions or **10%** of the entire targeted market's population.
Listen to 1-minute of the most popular radio station in the targeted market.	**5.4%** of all those that listen to radio that day or **3%** of the entire targeted market's population
Read one article in the targeted market's largest newspaper.	**6%** of all the people who live in the targeted market or **4%** of the entire targeted market's population

c. Now, please consider the *personalized* response rates our survey produced:

City	**Number of homes answering**	**Percentage of all homes targeted.**
Akron……..	**15,714**-homes answered one or more questions with a "Yes" or "No" response.	This is **20.72%** of all homes targeted.
Cleveland…….	**35,372**-homes answered one or more questions with a "Yes" or "No" response.	This is **19.01%** of all homes targeted.
Columbus……	**36,448**-homes answered one or more questions with a "Yes" or "No" response.	This is **17.79%** of all homes targeted.
Cincinnati……	**43,771**-homes answered one or more questions with a "Yes" or "No" response.	This is **19.77%** of all homes targeted.
Dayton……..	**29,720**-homes answered one or more questions with a "Yes" or "No" response.	This is **22.02%** of all homes targeted.
Toledo…….	**16,761**-homes answered one or more questions with a "Yes" or "No" response.	This is **20.39%** of all homes targeted.
Youngstown….	**11,918**-homes answered one or more questions with a "Yes" or "No" response.	This is **24.64%** of all homes targeted.

3. **Provisional voting works!** Ohio requires voters to vote in the precinct in which they are registered. Those who were unsure about their registration or who had moved used

provisional ballots. According to *Electionline*.org's April 2005 Briefing Paper: *Solution or Problem? Provisional Ballots in 2004,* the national average for counting ("converting") provisional ballots into votes was 68%:

> Alaska had the highest percentage of provisional ballots cast with 97 percent and five other states counted more than three-quarters of their provisional ballots – Oregon (85%), Washington (80%), Nebraska (78%), Ohio (78%), and Colorado (76%).[7]

Though election experts warn against trying to compare state-by-state percentages, it seems clear to me that provisional ballot requirements are not only fair and easily administered they are not nearly as confusing to voters as some have argued. Ohioans have been using provisional ballots since 1990. We know they work.

4. **Consider adopting "no-fault" absentee ballots.** One good way to avoid long lines at the polls on election days is to institute "no-fault" absentee balloting. Allowing a voter to cast an absentee ballot without having to justify his or her reasons for doing so is good policy. I was able to convince the Ohio Legislature to adopt no-fault absentee balloting, which began statewide with the 2006 May primary. This is one good way to increase voter turnout while taking much stress off busy local election officials. It is also a way for voters wary of electronic voting machines to use a paper ballot!

5. **Pay attention to what the lawyers are doing!** ***Secretaries of State are responsible for ensuring the integrity <u>and uniformity</u> of statewide voting procedures, and lawsuits by "watchdog" groups are now an integral part of the process by which elections are administered.***

All persons having an interest in the integrity and uniformity of elections should therefore pay very close attention to the relief demanded in lawsuits against elections officials. In 2004, the secretary of state's office litigated forty (40) cases in the months *before* Election Day and several while the election was going on. *None* of the issues involved in these cases was particularly "novel," or unanticipated. Those involving challenges to state laws or voting equipment could have been litigated during the four-year hiatus between elections. Those that involve administrative details (like the size

[7] *Electionline*.org, Briefing Paper: *Solution or Problem? Provisional Ballots in 2004,* April 2005 at pp. 11 (Table 2) and p. 7 (discussion).

140 and weight of paper or the burden of filing papers in a specific location, discussed
141 below) are both expensive and burdensome.

142 The point I am making here is that state election officials, not judges, are supposed to
143 administer elections. We have the resources, the staff, and the control to ensure that rules
144 and procedures are uniform throughout the state. A good example is the controversy
145 over the paper size and weight allowed for voter registration forms. I inherited those
146 rules from my predecessor as Ohio's secretary of state. They were based on years of
147 experience with the Post Office, which believed that lighter, smaller forms would be
148 shredded by automated, postal sorting equipment. When we learned that groups running
149 voter registration drives were going to drop off the forms at local boards of election, we
150 changed the rules. The goal *in both cases* was to ensure that properly-attested voter
151 registration forms get to the board of elections. When technologies change, so do the
152 times. Rules should change too.

153 6. **The most effective form of "voter suppression" results from *unfounded* attacks on**
154 **the integrity of those who administer elections[8].** A vibrant, pluralistic, and
155 participatory democracy depends on trust. Voters who have a stake in the outcome of an
156 election will go to the polls and make themselves heard when they are confident that
157 their friends and neighbors who staff the polls and tally the ballots will process them
158 fairly with reliable, state-of-the-art voting technology.

159 Ohioans trusted the system in 2004 – and it worked for them! Turnout in the African-
160 American community and among young people was record-breaking around the state[9].

---

[8] *See* A Fair – but Improvable – Election", *Call & Post* (Newspapers of Ohio), Thursday, December 2, 2004:

> Certainty we can make the process better. But let's not throw out the baby with the bath water. *Creating a cynicism among African Americans that their votes somehow did not count because the ultimate result was not in the favor of the notional Democrats is not the best way to create confidence among Black voters or to ensure that voter turnout and interest among African Americans remains high.* (emphasis added)

[9] *See, e.g.*, Editorial, "A Fair – but Improvable – Election", *Call & Post* (Newspapers of Ohio), Thursday, December 2, 2004:

> But even as we fight to improve the voting process, we should not underestimate the impact that *enfranchised* African-American voters had in this election. Black voters came out in near-record numbers, and were responsible for a major shift in Franklin County government, including the election of a Democrat-controlled Board of County Commissioners for the first time in 20 years. (emphasis added)

The same problem occurred in Knox County, the home of Kenyon College and Mount Vernon Nazarene University. According to the *Cleveland Plain Dealer*

161 In most cases, the technology served them well, but in some cases local officials, basing
162 their judgments on data from the 2000 election, did not anticipate the record turnout.
163 Long lines were the result[10].

164 7. **Technology is only one part of the solution.** ***Technology is important, but so is the***
165 ***considered judgment of people whom the states entrust with the responsibility to run***
166 ***elections***. Those who study voting technology know that ***paper ballots*** are the most
167 reliable. We also know what *technologies* are most reliable: ***Precinct Count Optical***
168 ***Scanners*** (***PCOS***).

169 This is why I directed in January 2005 that Ohio should use its HAVA funds to buy and
170 install PCOS systems s in all of Ohio's 88 counties[11]. Voting machine manufacturers and
171 a state judge did not like that.

172 8. **Follow the money!** ***Congress and the states have spent billions of dollars to "improve"***
173 ***voting equipment function and reliability. We need to ensure that the money actually***
174 ***buys "real" improvements.*** I chose PCOS machines for Ohio because they are reliable
175 and time-tested. They provide a voter-verifiable, paper audit trail (VVPAT). PCOS
176 machines are comparatively inexpensive, and completely avoid all of the reliability
177 concerns associated with either electronic (DRE) machines or the ballot security issues
178 associated with central-count optical scan (CCOS) machines.

179 Unfortunately, I was overruled by a state judge who acted at the behest of voting
180 machine vendors who wanted to sell other equipment and some county boards of
181 elections who wanted to exercise their pre-HAVA local options to select equipment and

---

A late registration drive at Kenyon meant many names were added in the two weeks before Election Day, after voting machines had been assigned and programmed. Election workers had no way of predicting that the Kenyon precinct would have one of the highest turnouts in the county – almost 73 percent – said Rita Yarman, deputy director of the Knox County Board of Elections and a Democrat.

Bill Lubinger, "Untangling the voting controversies," *Cleveland Plain Dealer*, Sunday, January 9, 2005.

[10] *See* Bill Lubinger, "Untangling the voting controversies", *Cleveland Plain Dealer*, Sunday, January 9, 2005.

[11] Ohio Secretary of State, Directive 2005-01 (January 2005), available online at: http://www.sos.state.oh.us/SOS/Upload/elections/directives/2005/Dir2005-01.pdf and attached; Directive 2005-07 (April 14, 2005), available online at: http://www.sos.state.oh.us/SOS/Upload/elections/directives/2005/Dir2005-07.pdf and attached.

choose their vendors[12]. It simply did not matter to the judge that the machines were neither fully tested nor certified, or that the VVPATs were only in the pre-production testing phase. Nor did it matter that the now widely-reviled, touch-screen systems I had rejected in favor of PCOS machines were already being questioned in the press by voting rights groups. At least to some extent, local control prevailed[13].

In sum, I did my job on the technology and reliability issues. Thankfully, whatever story there is to tell about Ohio's current voting technology does not involve me!

CONCLUSION

I hope that these remarks have given the Committee the benefit of my experience as Ohio's Chief Elections Officer. Election administration is not for the faint-of-heart or the thin-skinned. It is an important job on which the future of our American democracy depends.

Thank you, Mr. Chairman. I will be pleased to answer questions. I have attached a number of additional documents for the record, and ask that they be admitted at this time.

---

[12] *See, e.g., Election Systems & Software, Inc. v. J. Kenneth Blackwell, Ohio Secretary of State,* Case No. 05-CVH-004855 (Common Pleas. Franklin County, Ohio); *Hart Intercivic, Inc. v. Ohio Secretary of State*, Case No. 2005-06651 (Ohio Court of Claims). The Franklin County Board of Elections also sued, asserting its right to select the voting equipment of its choice. For a summary of the procedural aspects of the litigation with Elections Systems & Software, Inc. (ES&S) and Hart Intercivic (Hart) over the certification of DRE machines and their VVPATs, see *State ex rel. Blackwell v. Crawford*, 106 Ohio St.3d 447, 835 N.E.2d 1232 (2005) (*per curiam* opinion, O'Connell, J., dissenting). The Chief Justice of Ohio later disqualified the trial judge in the *ES&S* case because

> The judge was not satisfied … with this court's decision denying Blackwell's requested writ. He has instead-with vitriolic language-taken the affirmative step of asking this court to impose financial sanctions against Blackwell's attorneys, describing their arguments as baseless and frivolous. Judge Crawford's quest to see that Blackwell's attorneys are punished financially for pursuing the prohibition case in this court would be apt to cause the reasonable and uninvolved observer to question the judge's ability to preside fairly and impartially over further trial proceedings involving defendant Blackwell.

In re *Disqualification of Crawford*, 110 Ohio St.3d 1223, 850 N.E.2d 724 (per Moyer, C.J.)

[13] I did prevail in the Ohio Legislature on the maximum permissible ratio of voters per electronic voting machine (175:1). See footnote 3 above.

Plain Dealer | Saturday, October 30, 2004

Ohio election bombshell

Blackwell tries to ban challengers at polls; Petro refuses order

Blackwell

TED WENDLING
Plain Dealer Bureau

COLUMBUS — Going against his own party, Republican Secretary of State Ken Blackwell sought Friday to prevent battalions of political party activists from challenging Ohio voters at polling places on Tuesday.

Blackwell's stunning announcement, intended to settle federal lawsuits in Cincinnati and Akron, brought him into immediate conflict with the Ohio Republican Party and one of his 2006 gubernatorial rivals, Republican Attorney General Jim Petro.

Blackwell gave a perfunctory notice to Petro, faxed his recommendation to the judges and then rocked the state GOP by publicly instructing Petro, his lawyer, to formally present the settlement offer in both courts.

Petro said he would not.

"Neither the secretary of state nor I can negotiate away the legal rights of Ohio's citizens," Petro said in a statement released by his office. "Thus, I cannot submit to the federal courts the secretary's unlawful proposal to ban all challengers for all parties, candidates or issues on Election Day."

SEE BLACKWELL | A8

Petro

BLACKWELL

FROM A1

Blackwell's order stuns Ohio GOP

The clash between the state's chief elections officer and its chief lawyer threatens to throw into further turmoil an election that is already quivering, with partisan rage as President Bush, Sen. John Kerry and their surrogates crisscross this key battleground state.

Both the Akron and Cincinnati lawsuits remain unresolved.

Blackwell's announcement in Columbus briefly halted a hearing before U.S. District Judge Susan Dlott in Cincinnati, where civil rights activists are seeking to have the state law that allows polling place challengers overturned as unconstitutional. After Dlott read Blackwell's news release, the room quickly emptied as nearly a dozen lawyers — some appearing perplexed — hoofded in the hallways or dialed their cell phones to find out what was happening.

Just days earlier, Blackwell had directed county elections boards to allow a challenger in each precinct.

When court resumed, Assistant Attorney General Richard Coglianese told the judge he represented Petro but would no longer represent Blackwell.

"We are defending the statute and the rights of Ohioans," he said.

Later, Dlott announced that she had received word that the Justice Department planned to file a friend-of-the-court brief in the case.

Eric Holland, a spokesman for the Justice Department in Washington, would not comment Friday evening on the possibility of intervening. The department does plan to send civil rights division attorneys and staff to monitor the election in dozens of jurisdictions, including Cuyahoga, Franklin and Hamilton counties in Ohio.

Outside the courtroom, Hamilton County Republican Chairman Mike Barrett said GOP officials would not back off plans to place challengers in 251 precincts in Cincinnati and its suburbs that voted for Al Gore in 2000.

These precincts are in predominantly black neighborhoods. In some, Gore got up to 99 percent of the votes, he said.

He said up to 20 percent of the precincts in Cincinnati are staffed entirely by Democrats who work for the board of elections.

"We need to observe," Barrett said.

Legal wrangling over challenges in voting precincts dominated by poor and black voters has left some Ohioans unsure whether or where to vote. But David Sullivan, Democratic voter protection coordinator in Ohio, said the challenges have galvanized minority voters.

Steven Hoefner, an associate professor of law at Ohio State University, said Blackwell would have difficulty keeping challengers out of polling areas, but he said legal arguments that the law "is a holdover from Jim Crow-era statutes" might be persuasive.

"We've never had challengers in every precinct, or if not in every precinct, in so many predominantly African-American precincts," he said. "It does raise the specter both of some constitutional rights being violated, as well as violations of the Voting Rights Act."

Blackwell and Petro, who are both involved in the Bush-Cheney campaign, clashed earlier this week when Petro, against Blackwell's wishes, appealed an order in another case before Dlott in Cincinnati. Petro lost his appeal of Dlott's decision to halt GOP voter challenges in six Ohio counties. On Friday, Dlott expanded her order to cover all 88 Ohio counties.

Blackwell proposed the ban on challengers, but not witnesses, from polling places after the Summit County Democratic Party sued in federal court in Akron, seeking to overturn the law that permits challengers, and the Cincinnati challenge was filed by activists Marian and Don Spencer, who claimed that the challengers could intimidate and harass voters.

"It has no sensible application in today's democratic process," said Andrew Padrutt, executive director of the Summit County party. He said challenges would create delays at the polls and discourage people from voting and would not give disqualified voters ample time to appeal.

Blackwell said he disagreed that the law was discriminatory, but said he proposed the settlement in the interest of promoting a smooth election.

"While I do not agree there is any discriminatory intent or result from these statutes, I do believe a full airing of the issues cannot be completed prior to Tuesday's election," he said.

Democrats cheered Blackwell's proposal.

"It is now abundantly clear that the entire Republican voter-suppression effort is backfiring," Sullivan said.

George Forbes, president of the Cleveland chapter of the NAACP, agreed.

"I think it's great," Forbes said. "The Republicans are the ones who want the challenges. . . . If they withdraw, we can abide by that."

Mark Weaver, legal counsel for the Ohio GOP, tempered his comments.

"We have challengers ready to go to the polls, but we're going to abide by whatever the law is and we're going to allow elections officials to resolve what the rules are," he said. "The state party's position is whatever the law permits should be allowed, and right now the law allows" challengers.

In the short term, the Blackwell-Petro clash will only "now more confusion," said John Green, director of the University of Akron's Bay C. Ellis Institute of Applied Politics.

"It sounds like Secretary Blackwell's position would probably be fairly popular among a wide spectrum of voters — 'let's set all this aside until after the election,'" Green said. "Of course, Petro is saying this shouldn't prevent him from doing his job, which is to represent the state of Ohio in court. . . . There seems to be a struggle for advantage going on."

Plain Dealer Reporters Sandy Theis, Bill Sloat, Stan Lattner, Elizabeth Austerand, Joseph L. Wagner contributed to this story.

To reach this Plain Dealer reporter:
twenty@plaind.com
1-800-228-8272

THE PLAIN DEALER

Monday, January 17, 2005

Delays at polls weren't a scheme

Voting machines distributed evenly

MARK NAPIER
Plain Dealer Politics Writer

When they stood on the floor of Congress recently to protest the results of Ohio's presidential vote, Democrats told a national audience about their suspicious hunch: People in Democratic strongholds were short-changed on voting machines on Election Day.

Voter groups and activists have lobbed the same accusation for weeks. Long lines in urban areas, such as Cleveland, kept John Kerry supporters from voting, they say.

But a Plain Dealer analysis shows that, in Cuyahoga County at least, the elections board distributed machines equally to city and suburban polling locations.

The long lines at some locations appear to be more the result of timing, new voters and overwhelmed poll workers, not necessarily a shortage of machines.

Before the Nov. 2 election, the elections board allotted each Cleveland precinct one machine for every 117 registered voters within its boundaries – the same ratio of machines that suburban precincts received.

In other words, the more registered voters a particular precinct had, the more machines it received, regardless of where that precinct was.

And in the end, the busiest precincts — when measured by the number of ballots cast per machine — were actually in the suburbs, not Cleveland, according to a Plain Dealer analysis of records from the Cuyahoga County Board of Elections.

Countywide, voters cast an average of nearly 71 ballots on each of the county's 8,000 machines. In Cleveland alone, voters cast an average of 62 ballots per machine. In the suburbs, the average was 74.

Brook Park's Precinct 3A had the most ballots cast per machine, with 163. Voters in that precinct were among those casting ballots at City Hall.

SEE VOTE | A6

VOTE

FROM A1

Machine records show even distribution

In Strongsville's Precinct 3C (at Edna Surrarrer School), voters cast 149 ballots per machine.

The busiest machines in Cleveland were on the West Side, in Ward 15's Precinct I, where voters at the YMCA on Pearl Road cast 101 ballots per machine.

The analysis does not include the more than 200 machines that the board distributed across the county on Election Day to replace broken machines or supplement precincts with higher-than-expected turnout. It also does not factor in voters who, facing long lines, walked away without voting. Neither election officials nor voting groups can pinpoint how many people left polls.

Despite charges that election officials failed to properly prepare for Election Day, it appears those in Cuyahoga County tried. In deciding how to distribute machines, the board used a liberal formula that included not only active voters but also inactive voters — those who had not shown up to the polls in years.

In Franklin County, which had some of the longest lines in Ohio on Election Day, officials distributed machines using a ratio based only on active voters.

Long lines did form at some of Cuyahoga's 584 polling locations. And those on Cleveland's East Side — where problems were most anticipated — received the most attention from politicians, voter groups and reporters on the lookout for glitches.

The lines formed for a number of reasons: waves of new voters; inexperienced or overwhelmed poll workers; a crush of voters during peak hours; and general confusion at larger polling sites that host multiple precincts.

Michael Vu, director of the Cuyahoga elections board, admits his office needs to improve some of its "process and procedures," but he said election workers and voters "should applaud themselves" for how Election Day unfolded.

One of the moves the board may study is better preparation for peak voting times. Unlike restaurants, which schedule staff size to accommodate their busiest hours, the elections board did not assign additional staff or machines specifically for peak times.

Each precinct had four poll workers, typically two Democrats and two Republicans. The board added a fifth poll worker to precincts it believed would be busy. Also, each polling location had an inspector to help direct voters.

That was not enough, however, to avoid lines at Woodbury Elementary School in Shaker Heights.

The polling location, which served voters from both Shaker Heights and Cleveland, housed tables and machines for six precincts.

Some voters complained of waits reaching 2½ hours.

An early morning crowd overwhelmed at least one precinct at Woodbury — Cleveland Precinct 4D — which led the chief poll worker to quit. That created a "domino effect" of problems, Vu said.

One problem pointed out by Zesla Mitchell, who worked her first presidential election on Nov. 2, was that the precinct didn't have enough machines to handle the morning rush, starting at 6:30 a.m. Woodbury was assigned nine machines for Precinct 4D, but the board sent an additional eight by early afternoon.

"After we got more machines, things were smoother after that," Mitchell said.

Still, Vu said predicting exactly where and when a surge of voters will appear is akin to "picking winning lottery numbers."

As it does in every election, the Cuyahoga board set up six offices across the county from which extra machines could be delivered quickly to crowded polling locations.

In contrast to Woodbury, Precinct 3A in Brook Park had a smooth Election Day despite heavy turnout. Voters had relatively few problems, said poll worker Sam Siverd.

"We had a crowd when we first opened, but it remained steady throughout the day," he said.

He attributed the precinct's success in part to experienced voters who needed little assistance and to a consistent flow of voters, as opposed to a sudden crush at peak hours.

The board is examining ways to reduce the congestion at some polling places, including reducing the number of precincts at certain locations. But that will take cooperation from public and private institutions that have become increasingly unwilling to host Election Day voting, Vu said.

He also said the board will consider ways to improve training of poll workers.

Other groups are planning more analysis. Last week, two senior Democratic lawmakers — U.S. Reps. Henry Waxman of California and John Conyers of Michigan — asked the Government Accountability Office, the investigative arm of Congress, to find what caused the long lines in Ohio.

Sharon McGraw, executive director of the League of Women Voters of Cleveland Educational Fund, has already done her analysis. She said "logjams" at some locations were partly the result of first-time voters relying on poorly trained or confused poll workers. She recently reviewed the Nov. 2 problems with other representatives of the league.

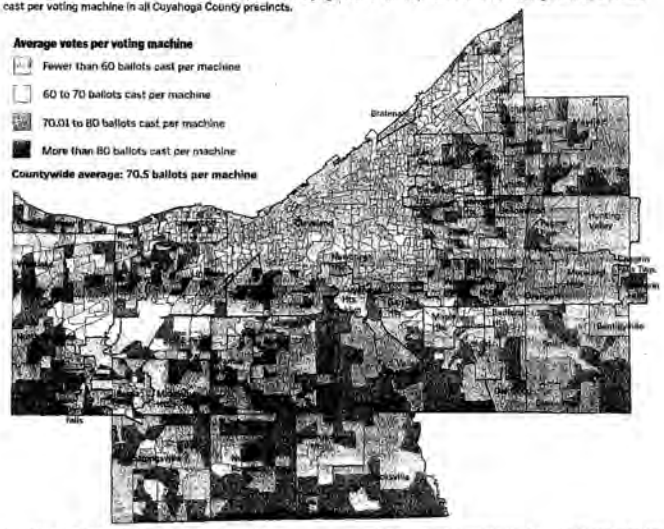
"It should move smoother, and part of it comes down to human errors, and part of that was confusion created by all the lawyers and everybody involved," she said.

To reach this Plain Dealer reporter: mmymik@plaind.com, 216-999-4849

Despite charges that election officials failed to properly prepare for Election Day, it appears those in Cuyahoga County tried. In deciding how to distribute machines, the board used a liberal formula that included not only active voters but also inactive voters – those who had not shown up to the polls in years.

Voting machines busiest in suburbs

Voting-rights groups and some Democrats in Congress have questioned whether precincts in Democratic strongholds, including Cleveland, were short-changed on voting machines on Election Day. But a Plain Dealer analysis shows that in Cuyahoga County, election officials appear to have distributed machines fairly, and even gave extra attention to precincts in the city and some inner-ring suburbs. The busiest machines, in fact, were in outlying suburbs. The map below shows the average number of ballots cast per voting machine in all Cuyahoga County precincts.



SOURCE: Plain Dealer analysis of Cuyahoga County Board of Elections data

ALAN ACHKAR, TOM GAUMER AND KEN MARSHALL | THE PLAIN DEALER

THE COLUMBUS DISPATCH | Metro & State | FRIDAY, JULY 1, 2005

CIVIL-RIGHTS PANEL

No major election problems found

Justice Department says voting devices weren't distributed unfairly in '04 vote

By Kevin Mayhood and Robert Vitale
THE COLUMBUS DISPATCH

The Franklin County Board of Elections made mistakes last November, the U.S. Department of Justice said yesterday, but it did not discriminate when it allocated voting machines.

Too few voting machines, bad data on how many voters were eligible, a sharp increase in voters from the 2000 election and a lengthy ballot in Columbus caused long lines at some polls, the Department of Justice's Civil Rights Division concluded.

But contrary to complaints that predominately black precincts had fewer voting machines than in 2000 and suffered the longest lines last November, "The allocation of voting machines actually favored black voters," voting section chief John Tanner said in a letter to Assistant Franklin County Prosecutor Nick Soulas this week. The prosecutor's office represented the elections board during the inquiry, which began last winter.

Tanner said that while the Franklin County Board of Elections allocated fewer voting machines overall to 54 predominantly black precincts than it had in 2000, blacks did not suffer. He said that predominantly white districts averaged 172 voters per machine versus 128 voters per machine in the predominantly black districts.

Turnout was nearly 9 percentage points lower in predominantly black districts, Tanner said.

After last-minute court action on Election Day, some polls were ordered to stay open beyond the traditional 7:30 p.m. close. Tanner said the predominantly black precincts were open an average of 1 hour and 15 minutes longer than the predominantly white precincts.

Matthew Damschroder, director of the elections board, said the Department of Justice contacted Franklin County elections officials early this year because of what he called "this low rumble out there" that the presidential election wasn't conducted honestly and impartially.

Primarily fueled by Internet bloggers and a post-election report by U.S. Rep. John Conyers Jr., of Michigan, the top Democrat on the House Judiciary Committee, critics charged that long lines to vote in Columbus were the result of an election-stealing strategy to discourage black voters who overwhelmingly backed Democrat John Kerry.

Conyers blasted the Justice Department findings in a letter yesterday to U.S. Attorney General Alberto Gonzales:

"I am flabbergasted," he wrote. "In four pages of somewhat convoluted logic, you tend to focus on specific and largely irrelevant details regarding the black and white voting tendencies with regard to the issue of machine allocations, while missing the main point that tens of thousands of individuals were effectively denied their precious right to vote in the critical state in the entire election."

Election critics Bob Fitrakis and Clifford O. Arnebeck said testimony by voters clashes with the findings. They want a close look at how Tanner came up with the figures he cites to back his assertions.

Damschroder has said the bipartisan board decided how machines would be distributed based on past voting trends and current registration numbers. He said Tanner's conclusions were "very heartening for us."

"We're concerned, too, that there were people who thought we did this in a discriminatory manner."

The elections board has vowed to have more voting machines in place for the 2006 statewide elections.

kmayhood@dispatch.com
rvitale@dispatch.com

Democrats keep leveling charges at Blackwell they can't back up

Secretary of State J. Kenneth Blackwell is flypaper for controversy.

By sticking his nose into fights and poking his finger in eyes, he has become a well-known political maverick, a trait in this year of the anti-Republican incumbent that led him to the GOP gubernatorial nomination.

JOE HALLETT

Last week, Blackwell stirred a new firestorm by writing rules to implement House Bill 3, the election-reform law that took effect May 2.

One rule requires people who are paid for registering voters to personally take forms signed by new voters to boards of election offices or face a fifth-degree felony. Typically, signature-collectors turn over the forms to groups sponsoring voter-registration drives that then deliver them en masse to election officials.

Democrats were outraged, complaining that the rule could shut down efforts to register new voters. Who in Westerville, for example, would want to collect new-voter signatures and risk becoming a felon for not personally driving them the 15 miles to the county election board in Downtown Columbus? The Ohio League of Women Voters called the rule goofy and said it would imperil voter-registration drives using volunteers.

Lee Fisher, the Democratic nominee for lieutenant governor, said the rule adds to the "ample evidence that Ken Blackwell has manipulated the election system to disenfranchise voters." Echoing an editorial in *The New York Times*, Fisher called upon Blackwell to relinquish his *Nov. 7* election-oversight duties.

But Blackwell has a strong counter-argument: The rule he wrote simply follows the law. Indeed, it does appear to do that. Critics might more appropriately aim their ire at the GOP-controlled legislature and demand that it change the law.

Doing that, however, would deny Democrats a new opportunity to use Blackwell as a scapegoat. They haven't stopped blaming him for Sen. John Kerry's loss to President Bush in the 2004 presidential election, never mind that Kerry told *The Dispatch* just a month ago that he did not lose the election because of fraud. Still fretting, Democrats nationally are flooding the state with foot soldiers and cash to exact revenge against Blackwell in November.

The latest to enter the fray is Robert F. Kennedy Jr., who authored a long story in the June 5 issue of *Rolling Stone* titled: "Was the 2004 election stolen?" Kennedy's conclusion: "I've become convinced that the president's party mounted a massive, coordinated campaign to subvert the will of the people in 2004." Kennedy's chief villain is Blackwell.

If you read Kennedy's story, make sure to go to Salon.com and read the rebuttal by Farhad Manjoo, a Salon staff writer, who spent a year exhaustively studying the Ohio election rather than, a la Kennedy, dipping his toe into it 19 months later. Writes Manjoo, "If you do read Kennedy's article, be prepared to machete your way through numerous errors of interpretation and his deliberate omission of key bits of data."

That warning is echoed by my colleague Mark Niquette, who closely covered and dissected the election aftermath. Cutting through the swirl of conspiracy theories about how Blackwell helped Republicans steal the election, Niquette told me that the critics conveniently neglect one crucial fact: Stealing the Ohio election for Bush would have required widespread complicity by Democrats.

Ohio has a bipartisan election system with an equal number of Democrats and Republicans at the county level, where elections are actually run, Niquette said. For the massive fraud outlined in stories such as Kennedy's to have occurred without being exposed at the time, scores of Democratic election officials and hundreds of lawyers for Kerry in Ohio would have had to have been bought off, incompetent or both.

Kennedy rails about the woefully inadequate number of voting machines in Franklin County's inner-city precincts, but with bipartisan approval, a Democrat decided where the machines would be placed. Kennedy accuses Blackwell of twisting the rules on provisional ballots to help Bush block Democratic votes but neglects to mention that 52 other states have the same rules for counting such ballots — and that Ohio's rate for counting them was 77 percent, the third highest in the nation.

Blackwell invited criticism by agreeing to serve as Bush's Ohio co-chairman, but Democrats still haven't met the burden of proof that he stole the 2004 election.

Joe Hallett is senior editor at The Dispatch.
jhallett@dispatch.com

Dayton Daily News
Friday, July 1, 2005

Around Ohio

Department of Justice finds no racial disparities in voting

COLUMBUS — The U.S. Department of Justice found no evidence of discrimination in the distribution of Franklin County's voting machines in the 2004 presidential election, according to a report.

The four-page report released Wednesday followed last week's Democratic National Committee investigation into Ohio's contested election. The department's data refute DNC claims that black voters were placed at a disadvantage because voting machines were distributed disproportionately among precincts.

The DNC report found racial disparities between the number of registered voters allocated per machine in predominantly black and white precincts, but, using turnout rather than registration numbers, the Justice Department said the distribution narrowly favored black voters.

Walter Mebane, a Cornell University professor who worked on the DNC report, said voters in predominantly black precincts who showed up early in the morning to vote found fewer machines than those who voted later, which could explain some of the differences between the two reports.

DAYTON DAILY NEWS WEDNESDAY, OCTOBER 20, 2004

Blackwell easy target for Democrats

But the big picture isn't as clear as some suggest

Martin Gottlieb
COMMENTARY

Democrats are primed to turn Ohio Secretary of State J. Kenneth Blackwell into the Katherine Harris of 2004. He is making their job easy. And yet his overall record doesn't sustain the charge.

Harris was the secretary of state in Florida in 2000 who, in the eyes of Democrats, made every possible decision in favor of the Republicans in the post-election dispute. Whether she is really the shameless hyperpartisan that Democrats portray is beside the point. Each party has its folklore. Her name is now Democratic shorthand for shameless hyperpartisan.

So here comes 2004, sooner than anybody expected, judging from all the unresolved issues about how to administer the election. And Ohio is presumed to be as central as Florida. And the secretary of state is a self-promoting ideological warrior who is trying to become governor in 2006 by out-Republicaning his Republican competitors, thus winning favor with primary voters.

He's the candidate who's making a big deal out of being against a recent temporary sales tax hike enacted by less Republican Republicans. And he's big for the ban on gay marriage.

So he's just the kind of person Democrats instinctively distrust most.

Moreover, he is impossible to defend against the charge of self-promotion. He is using government money to tattoo himself on your television screen, in the guise of an ad advising you to make sure you punch the punch card all the way through.

He made himself a particularly easy target for Democrats last month by making a fuss for a while about the thickness of voter registration forms. He said the thin ones that many voters and organizations were using could not be processed well by machines. He had to back off that, finally telling county election boards to accept them. But the political damage was done.

Now there is, among other things, his relatively hard-line stance on "provisional" ballots.

A primer: After 2000, the feds decided that too many voters had been illegitimately turned away from the polls for allegedly not having registered. So Congress passed a law pushing states to allow voters to cast "provisional" ballots if their registration was in doubt, with those ballots to be counted later if the voter turned out to have been registered.

Specifically, the new federal law says voters should get such ballots if they are in the right "jurisdiction." Some people interpret that to mean county, because the county level is where voter records are kept. However, Ohio law says a voter must be in the right "precinct." Blackwell insists this means that the vaguer word "jurisdiction" means precinct in Ohio.

Democrats want the county standard to apply, because they think any possibility for confusion about who is registered tends to hurt people of lower education levels most, meaning a disproportionate number of Democrats. And the Democrats see special potential for confusion this year, because many people are newly registered and because the intensity of the year may bring out voters who haven't voted since their precinct boundaries were changed.

A federal judge in Toledo — a Clinton appointee — has sided with the Democrats. But a judge in Missouri heard a similar case and adopted something more like the Blackwell standard. And the head of the bipartisan U.S. Election Assistance Commission, created after 2000, agrees with Blackwell.

Blackwell does seem to have a respectable legal case. But to Democrats, he seems to be applying the strictest standard he can get away with.

So perhaps it should be noted in his defense that, ideological warrior though he is, he has not generally used his current job to win favor with the political right. Rather, he has used it to demonstrate to others that he is capable of being a nonpartisan reformer when that's what the situation demands.

Most specifically, he's the Ohio Republican who pushed hardest for adoption of high-tech electronic voting systems to replace the old punch card system. He did that at a time when Democrats were complaining that the punch cards hurt Democrats, by resulting in more ruined ballots in low-income areas.

Republican state Sen. Jeff Jacobson of Montgomery County fought Blackwell tooth and nail, insisting that the whole issue was just a bunch of Democratic sour grapes over 2000.

In fact, however, almost 100,000 punch cards in Ohio didn't get counted in 2000 (when the gap between the presidential candidates was about 140,000). And, as a new study by *The Columbus Dispatch* shows, predominantly black precincts had three times as many ruined ballots as the average.

Blackwell might have dug his partisan heels in like Jacobson. If he has now decided to go partisan on election-administration issues, it's a new tack.

Martin Gottlieb is an editorial writer and columnist for the *Dayton Daily News*. He may be reached at 225-2298 or by e-mail at mgottlieb@DaytonDailyNews.com.

CALL & POST

CALL AND POST THURSDAY, DECEMBER 2, 2004

A fair – but improvable – election

The Rev. Jesse Jackson has a problem with the Ohio election process. The fact that there were long lines on Election Day in predominantly-Black neighborhoods; that the rules governing provisional ballots forced voters using them to go to their correct precincts, which seemed to work against the newly-enfranchised voters who were pouring out to the polls; even that some exit polls did not match with the final results on Election Day – all point to a serious problem that must be addressed by a recount of the votes and a suit against the system.

"We can live with winning and losing. We cannot live with fraud and stealing," Jackson said in a press conference at Mt. Hermon Baptist Church in Columbus.

But was there fraud and stealing? Was the election really unfair? Or were there simply problems with the operation of the system that in fact are correctable?

Secretary of State J. Kenneth Blackwell said that the election went well. He accused Jackson of grandstanding, and of calling into question the entire process – a process, in Ohio, noted for its bipartisanship.

And he said that Jackson's charges could create the kind of cynicism among new voters that will work against the process.

But between these two voices – both Black, one a key Kerry supporter, the other a major backer of Bush – there is another voice that must be heard. It is the voice of Franklin County Democratic Party Chairman Bill Anthony. He is Black. Obviously, a Democrat. And the chair of the Franklin County Board of Elections.

Were there problems in the election? Certainly, Anthony said. But he argued that these were not problems of fraud or intimidation or vote suppression; they were problems of too few machines, too few resources.

From his position inside the process of Franklin County elections, Anthony could see what was happening. He pointed out that the county's growth – growth that demanded 29 new precincts – coupled with a stagnant number of voting machines, meant that the scarce machines would have to be allocated over more precincts. And the formula the county used to decide where the machines should go was based on 2000 voting patterns, and did not take into account the massive increase in registrations in inner-city neighborhoods.

In hindsight, we might argue over how voting machines were allocated. But that argument is not the same as arguing that Black voters were intentionally denied the opportunity to vote through various stratagems. In order to make that argument, as Blackwell – and Anthony – rightly point out, it would take the complicity of Anthony himself.

Can Ohio improve the way it handles elections? It certainly can – and must. We need new voting technology in all our precincts. We need more machines, especially in inner-city communities. We need more poll workers. And there needs to be bipartisan effort to bring all these changes to pass in Ohio before the 2006 election.

But even as we fight to improve the voting process, we should not underestimate the impact that enfranchised African-American voters had in this election. Black voters came out in near-record numbers, and were responsible for a major shift in Franklin County government, including the election of a Democrat-controlled Board of County Commissioners for the first time in 20 years.

Certainly we can make the process better. But let's not throw out the baby with the bath water. Creating a cynicism among African Americans that their votes somehow did not count because the ultimate result was not in the favor of national Democrats is not the best way to create confidence among Black voters – or to ensure that voter turnout and interest among African Americans remains high.

THE PLAIN DEALER

Wednesday, December 15, 2004 | B8

ALEX MACHASEKE
President and Publisher

DOUGLAS C. CLIFTON
Editor

ROBERT M. LONG
Executive Vice President

BRENT W. LARKIN
Editorial Page Director

MoveOn.Now

The zealots who refuse to accept Ohio's vote count risk undermining confidence in the system itself

Most Americans, including the vast majority of those who supported John Kerry for president, have grasped the most basic reality of Election Day 2004:

George W. Bush was re-elected. He won roughly 60.7 million votes and carried 31 states with 286 electoral votes. Ohio's 20 Electoral College members formally cast ballots for the president Monday in the Statehouse.

Unfortunately, there is a small, but very vocal, group of Americans who refuse to accept this reality. They argue that what appear to be routine technical glitches and human errors were in fact an elaborate conspiracy to skew the election results. They claim that long lines at a few polling places, the rather unsurprising result of high voter interest, were evidence of a systematic campaign to discourage participation. In short, having failed to get the outcome they wanted at the polls, they have decided to mount an irresponsible campaign aimed at undermining public confidence in the electoral system itself.

Ohio, arguably the most intensive battleground for Bush and Kerry, has been the No. 1 target of these diehards.

Since Election Day, they have seized on isolated problems in a relative handful of this state's 11,366 precincts as proof of greater ills or even criminal activity.

One speaker in Columbus over the weekend likened Ohio to Ukraine. The Rev. Jesse Jackson has complained of widespread "fraud and stealing."

The Green and Libertarian parties, whose presidential candidates got a combined *three-tenths of one percent* of the vote in Ohio on Nov. 2, have demanded a recount of the state's 5.7 million ballots. That will cost taxpayers about $1.4 million. A coalition of critics, led by a former Ohio organizer for Ross Perot, has asked the Ohio Supreme Court to overturn the presidential election, as well as the outcome in the race for chief justice. The Kerry campaign, reflecting its leader's maddening desire to have everything both ways, has said it does not expect a recount to change anything — yet has also issued a list of things it wants local elections officials to double-check.

Obviously, there were problems on Election Day. There always are. Elections are run by imperfect humans. Many individual polling places are in the hands of civic-minded neighbors with a few hours of training. Machines malfunction. Voters mess up ballots.

But Ohio has already done its usual intensive post-election audit and reconciliation, a process designed to spot mistakes. That canvass resulted in Bush's unofficial 136,000-vote margin being reduced to the 118,000-vote edge that Secretary of State Kenneth Blackwell certified last week.

Ohio's bipartisan elections system makes the kind of GOP conspiracy that some allege all but impossible to execute. Every county board of elections consists of two Democrats and two Republicans. So when Jackson and other national Democrats question Ohio's outcome, they demean their own allies. William Anthony Jr., the African-American who chairs both the Franklin County Democratic Party and its elections board, has been personally stung by Jackson's slander: "Why would I sit there and disenfranchise my own community?" he asks.

The recount will go forward because by law it must; history suggests few votes will change. But it is time to focus on how to make future elections more efficient.

Clearly it would help if groups that register new voters did not deliver thousands of applications at the last minute. Ohio also needs an early voting system to relieve at least some of the pressure on Election Day. And rather than retreating from electronic voting machines, the state needs to find a secure system and back it up with a paper record.

Common-sense solutions can make a difference. Endless sour grapes will not.

Dayton Daily News

Opinions

Page A14 | Saturday, June 10, 2006

OUR VIEW

Robert Kennedy Jr. fails to carry Ohio for John Kerry

For decades after the 1960 presidential election, a certain myth was repeated ad nauseam and accepted widely — that *John F. Kennedy* won the presidency because Chicago Mayor Richard J. Daley's "machine" stealed.

There was a certain problem: Sen. Kennedy would have won the election even without Illinois; the Electoral College vote wasn't so close.

No matter. When the myth started to fade, it wasn't because people had become enlightened. It was because 1960 faded into history.

Well, now Ohio is developing into the Illinois of 2004. Although Sen. John Kerry never questioned the victory of President George W. Bush here, some people did. And still do.

Let's not even talk about blogs. Last summer, *Harper's* magazine's cover story was "None dare call it stolen: Ohio, the election, and America's servile press."

Now *Rolling Stone* magazine chimes in with a long story "Was the 2004 Election Stolen?" Covering much of the same territory, it leads with the big-print claim that "Republicans prevented more than 350,000 voters in Ohio from casting ballots or having their votes counted — enough to have put John Kerry in the White House."

The writer is Robert F. Kennedy Jr. So the family has now seen the election rewrite business from both sides.

The article is too long to be dealt with here point-by-point (it's online), but let's look at passages of local interest. The following is about some counties centered on Dayton, stretching north and south:

Robert F. Kennedy Jr.

RFK Jr. says: "The worst theft in Ohio may have quietly taken place in rural counties. An examination of election data suggests widespread fraud — and even good old-fashioned stuffing of ballot boxes — in 12 mainly populated counties scattered across southern and western Ohio: Auglaize, Brown, Butler, Clermont, Darke, Highland, Mercer, Miami, Putnam, Shelby, Van Wert and Warren. ... John Kerry's numbers were suspiciously low in each of the 12 — and George Bush's were unusually high.

"Take the case of Ellen Connally, a Democrat who lost her race for chief justice of the state Supreme Court. ... Kerry should have drawn far more votes than Connally — a liberal black judge who supports gay rights and campaigned on a shoestring budget. ...

"Yet in these 12 off-the-radar counties, Connally somehow managed to outperform the best-funded Democrat in history, outvoting Kerry by a grand total of 10,921 votes (or) 10 percent.

"(Congressman Dennis) Kucinich ... (says) 'Down-ticket candidates shouldn't outperform presidential candidates like that. That just doesn't happen. The question is: Where did the votes for Kerry go?' ...

"The ... likely explanation is that they were fraudulently shifted to Bush. ...

"Says (one analyst), 'By itself, without anything else, what happened in these 12 counties turns Ohio into a Kerry state. To me, this provides every indication of fraud.'"

The truth is: There's a simple, innocent explanation:

In judicial races in Ohio, including Supreme Court races, the ballot does not mention a candidate's party. That's an ideal situation for a Democrat in Republican territory in a low-profile race, Ms. Connally simply got the votes of people who didn't know that she is a Democrat.

(Moreover, the article doesn't mention a central fact: Votes are counted at the county level, where election boards have equal numbers of Democrats and Republicans. A multicounty conspiracy would be remarkable.)

Warren County in spotlight

RFK Jr. says: "The most transparently crooked incident took place in Warren County. (Officials devised) a way to count the vote in secret. Immediately after the polls closed, ... GOP officials — citing the FBI — declared that the county was facing a terrorist threat that ranked 10 on a scale of ... 10. The county administration building was hastily locked down."

The truth is: Well, that was certainly bizarre. The distrust is entirely appropriate. But it turns out that a Kerry campaign representative was present for the vote count and saw nothing suspicious. And the election board has as many Democrats as Republicans. They reported nothing kinky in the counting.

And the event was reported immediately, resulting in much attention for Warren County, even nationally. And, later, a (public) recount found nothing unusual in suspicious precincts.

Bush vs. marriage ban

RFK Jr. says: "Ohio ... had an initiative on the ballot ... to outlaw gay marriage. Statewide, the measure proved far more popular than Bush, beating him by 470,000 votes. But in six of the 12 suspect counties (mentioned above) — as well as in six other small counties in central Ohio — Bush outpolled the ban ... by 16,132. To treat the official tally, in other words, you must believe that thousands of rural Ohioans voted for both Bush and gay marriage."

The truth is: Nothing of the sort. In 11 of the 12 counties the article names, more people voted in the presidential contest than on the gay-marriage issue. Therefore, President Bush got more votes than the ban. This is not rocket science. Sen. Kerry also got more votes than opposition to the ban. (The numbers are at the secretary of state's Web site.)

As for the fact that the gay marriage ban got more votes statewide than President Bush: elementary. A lot of Kerry people in the cities (including blacks) supported the ban.

Much of the *Rolling Stone* article is about Secretary of State Kenneth Blackwell. It says he did a lot of things to decrease turnout, such as insisting (briefly) that registration cards must be on paper of a certain thickness. But, as the article notes, Mr. Blackwell lost some battles in court. The article insists that he nevertheless stoked confusion and kept some people from voting for fear they'd be hassled.

But his impact must have been minimal. After all, the election had an amazing million more votes than in 2000. Mr. Kennedy's article doesn't mention that.

The Kennedy piece, like the one in *Harper's*, makes charge after charge after charge. They shouldn't all be rejected out of hand. Clearly, something went wrong in counties where people had to stand in line to vote for hours.

Again, though, decisions about distribution of voting machines were made by evenly divided election boards. Republicans alone can't be blamed.

Among the 350,000 people *Rolling Stone* says were "prevented" from voting by Republicans, 174,000 were allegedly discouraged by long lines. The other main impediments were errors made by voting machines and avoidable errors made during registration. All are attributed to Republicans.

If these numbers were derived with the same sophistication used to analyze the judicial race and the gay-rights issue, they aren't worth much.

Even if every point in Mr. Kennedy's piece were wrong, though, there'd be no point in trying to put them all to rest. As the long-lived 1960 myth suggests, complaints about Ohio in 2004 will never, never go away, no matter what the facts show — until 2004 is history.

BLACKWELL - CORRECT VOTING LOCATION SURVEY – OCTOBER 23, 2004

KEY:

Y = YES
N = NO
? = UNDECIDED
S = SKIP
U = UNKNOWN (DNU MESSAGE PLAYS ONCE AND IF THERE IS NO INTELLIGIBLE RESPONSE THE CALL TERMINATES.)

DNU = DID NOT UNDERSTAND MESSAGE

 # = NEXT SEGMENT THAT DISPLAYS UPON RECEIVING A PARTICULAR RESPONSE. FOR EXAMPLE, Y = 3 MEANS ON YES GO TO SEGMENT 3.

1 Voting? - (YES, NO)

HI THIS IS SECRETARY OF STATE KEN BLACKWELL WITH A 30-SECOND VOTER SURVEY AND TIPS. ARE YOU VOTING IN THE NOVEMBER 2ND ELECTION? (THIS NEEDS TO BE SHORT TO ENGAGE THE RESPONDENT. THIS ALSO SETS THE FLOW FOR THE REST OF THE SURVEY. PLEASE NOTE THAT ONLY "YES" RESPONSES GO TO SEGMENT 2. ALL OTHER RESPONSES SKIP TO SEGMENT 3)

Y: 2
N: 3
U: 3
DNU1: 8

2 Know Where to Vote? - (YES, NO)

THANK YOU FOR VOTING. IN ORDER TO MAKE SURE YOUR VOTE COUNTS ON ALL ISSUES IMPORTANT TO YOU AND YOUR COMMUNITY, YOU MUST VOTE AT YOUR CORRECT VOTING LOCATION. DO YOU KNOW the precinct where you vote? (AGAIN, WE NEED TO KEEP THIS SHORT. REMEMBER RESPONDENTS WANT TO KNOW KEN IS LISTENING TO THEM. THEY DO NOT WANT TO HEAR WHAT KEN HAS TO SAY!!!! PLEASE NOTE THAT ONLY "YES" RESPONSES GO TO SEGMENT 4. ALL OTHER RESPONSES SKIP TO SEGMENT 5)

Y: 4
N: 5
U: 5

3 If you Were Voting - Know Where to Vote? - (YES, NO)

IF YOU WERE VOTING, AND YOU WANTED TO MAKE SURE YOUR VOTE COUNTED ON ALL ISSUES IMPORTANT TO YOU AND YOUR COMMUNITY, YOU WOULD HAVE TO VOTE AT YOUR CORRECT VOTING LOCATION. DO YOU KNOW the precinct where you vote? (PLEASE NOTE THAT ONLY "YES" RESPONSES GO TO SEGMENT 4. ALL OTHER RESPONSES SKIP TO SEGMENT 5)

Y: 4
N: 5
U: 0
DNU1: 9
DNU2: 10

4 Make Sure All in Home Know Location. - (PLAY ONLY)

THAT'S GREAT. PLEASE MAKE SURE THAT ALL THOSE THAT ARE VOTING IN YOUR HOME KNOW WHERE TO VOTE AS WELL.

S: 7

5 Hear Number Again? - (YES, NO)

IN ORDER TO MAKE SURE YOUR VOTE AND THOSE OF YOUR FAMILY COUNT, (BREATH PAUSE FOR EDIT PURPOSES) PLEASE CALL YOUR LOCAL BOARD OF ELECTIONS AT ( ) ___-____ TO FIND OUT where you vote. THAT NUMBER AGAIN IS ( ) ____ - _____. (BREATH PAUSE FOR EDIT PURPOSES) WOULD YOU LIKE TO HEAR THAT NUMBER AGAIN?

Here are the numbers to record and insert: (depending on time, Ken might also add their county name, instead of 'your local.' (E.g., Cuyahoga County Board of Elections).

Cleveland: 216-443-3200
Dayton: 937-225-5656
Youngstown: 330-783-2474
Akron: 330-783-2474
Columbus: 614-462-3100
Toledo: 419-213-4001
Cincinnati: 513-632-7000

Y: 6
N: 7
U: 0
DNU1: 9
DNU2: 10

6 Number Again. - (PLAY ONLY)

PLEASE CALL YOUR LOCAL BOARD OF ELECTIONS AT ( ) ___-____ TO FIND OUT the precinct where you vote. THAT NUMBER AGAIN IS ( ) ____-_____. (REPEAT OF THE PHRASE THAT STARTS AT "PLEASE" ABOVE. HENCE THE NEED FOR BREATH PAUSES THAT WILL HELP US EDIT IN THE RIGHT PHONE NUMBERS)

(SEE NUMBERS IMMEDIATELY ABOVE)
S: 7

7 Thank You - Goodbye - (PLAY ONLY)

AS YOUR SECRETARY OF STATE, I WANT TO ENCOURAGE ALL REGISTERED VOTERS TO GO TO THEIR CORRECT VOTING LOCATION ON NOVEMBER 2ND AND VOTE. HELP ME MAKE YOUR VOTE COUNT BY GOING TO YOUR CORRECT VOTING LOCATION. MAKE YOUR VOTE COUNT, OHIO. THIS IS KEN BLACKWELL. THANK YOU FOR YOUR TIME. GOODBYE.

S: 0

8 DNU - (DNU PROMPT)

PLEASE SAY YES OR NO NOW. (PROMPTS A YES OR NO RESPONSE)

9 DNU1 - (DNU PROMPT)

THIS MESSAGE WILL END WITHOUT A YES OR NO RESPONSE NOW. (WARNS OF HANG-UP WITHOUT RECEIPT OF REPONSE)

10 DNU2 - (DNU PROMPT)

PLEASE JOIN ME, KEN BLACKWELL IN EXERCISING OUR RIGHT TO VOTE ON NOVEMBER 2ND. THANK YOU FOR YOUR TIME. MAKE YOUR VOTE COUNT OHIO. GOODBYE. (PLAYS ON HANG-UP IF NO RESPONSE IS GIVEN)

11 Ans-Device 1&2 - (PLAY ONLY)

THIS WAS A PUBLIC SERVICE CALL REGARDING VOTING, FROM OHIO SECRETARY OF STATE KEN BLACKWELL. I'LL CALL BACK LATER. (PLAYS ON FIRST TWO PASSES IF WE GET AN ANSWERING DEVICE. DO NOT RECORD. STUDIO VOICE)

S: 0

12 Ans-Device 3 - (PLAY ONLY)

HELLO. THIS IS KEN BLACKWELL, YOUR SECRETARY OF STATE, WITH SOME TIPS TO MAKE SURE YOUR VOTE COUNTS! FIRST, VOTE AT YOUR CORRECT VOTING LOCATION. THE ONLY SURE WAY TO HAVE YOUR VOTE COUNT ON EVERY ISSUE IMPORTANT TO YOU AND YOUR COMMUNITY IS TO VOTE AT YOUR CORRECT precinct. IF YOU ARE UNSURE OF WHERE YOU SHOULD VOTE, (BREATH PAUSE FOR EDIT PURPOSES) PLEASE CALL YOUR LOCAL BOARD OF ELECTIONS AT ( ) ___-____. THAT NUMBER AGAIN IS ( ) ____-_____. (BREATH PAUSE FOR EDIT PURPOSES). AS YOUR SECRETARY OF STATE, I WANT TO ENCOURAGE ALL ELIGIBLE VOTERS TO GO TO THEIR CORRECT VOTING LOCATION ON NOVEMBER 2ND AND VOTE. HELP ME MAKE YOUR VOTE COUNT BY GOING TO YOUR CORRECT precinct. MAKE YOUR VOTE COUNT, OHIO. THIS IS KEN BLACKWELL. THANK YOU FOR YOUR TIME. GOODBYE. (***THIS IS ALL THAT NEEDS TO BE SAID***. IT NEEDS TO BE LESS THAN 100-WORDS. CONSTITUENTS WILL LISTEN TO IT THAT WAY. PLAYS ON ANSWERING DEVICE MESSAGES ON THIRD PASS. YOU CAN CHANGE THIS IF YOU LIKE. PLEASE TRY AND KEEP IT TO UNDER 30-SECONDSTOTAL OR THIS SAME LENGTH (100 WORDS))

S: 0

Here are the numbers to record and insert: (depending on time, Ken might also add their county name, instead of 'your local.' (E.g., Cuyahoga County Board of Elections).

Cleveland: 216-443-3200
Dayton: 937-225-5656
Youngstown: 330-793-2474
Akron: 330-783-2474
Columbus: 614-462-3100
Toledo: 419-213-4001
Cincinnati: 513-632-7000

APRIL 2005

electionline.org

Briefing

Solution or Problem? Provisional Ballots in 2004

They weren't quite the "hanging chad" of 2004, nor quite the safeguard envisioned by voting rights advocates. But regardless of how they were perceived, provisional voting was one of the most controversial aspects of post-Florida election reform around the country.

The federally-mandated system of provisional voting, included as part of the Help America Vote Act (HAVA), provides for voters who believe they are registered but whose names do not appear on polling place rosters. November marked the first time provisional ballots were required nationwide in a general election, with results that could generously be rated as mixed.

The election revealed quite dramatically that when it comes to provisional ballots, a national standard hardly means national uniformity – a reality that resonates across the entire issue of election reform and HAVA implementation.

This lack of uniformity in implementation of a uniform standard was especially stark with provisional ballots, where voters received such ballots under different circumstances and for different reasons. In Georgia, those not on registration rolls could have their provisional ballots counted if they were cast in the correct jurisdiction. Across the border in Florida, a voter found to be otherwise qualified would have his vote rejected if he cast it in a precinct other than his own.

Inside

Introduction 1
Executive Summary 3
The Trouble with Numbers 4
Key Findings 5
The Notification Process 6
Activity in Congress and States 9
Tables 11
Snapshot of the States 14
Methodology 18
Endnotes 18

Additional differences complicated the process as well. In Connecticut, voters were told to go to their correct precinct before they could be given a ballot. In Florida, poll workers issued provisional ballots to voters in the incorrect precinct – if the voter demanded it.

Then there were distinctions within states. News reports in Ohio indicated some provisional ballots cast by people not in their assigned precinct were counted – an apparent violation of a state directive.[1]

Some counties in Washington tracked down voters who would have otherwise had their provisional ballot rejected because they failed to complete part of their voter registration form.[2] This "second chance" for some voters had a number of politicos fuming as the state tried to sort out the closest gubernatorial election in Washington's history.

"Some counties have gone above and beyond what's required by law," said John Pearson, the state's deputy director of elections.[3]

It is these imbalances that have many concerned that Congress' cure for what ailed much of the electoral system before the 2000 election might now be sick as well.

This 10th *electionline.org* Briefing investigates provisional ballots by analyzing the counting and rules for qualifying ballots in each state. Who received a provisional ballot and why? Where did they receive the ballot? Under what circumstances were their ballots counted or rejected? And overall, how many ballots ended up being included in the final tally?

By looking at the numbers from each state, *electionline.org* found the differences in provisional ballot rules from state to state affected how many ballots were counted.

This report does not intend to imply that provisional ballots were a failure. To the contrary, more than 1.6 million voters received provisional ballots in the 2004 presidential election. More than a million were counted.

Five years ago, hundreds of thousands of those voters would have been turned away at the polls with no remedy – even if they were left off the rolls through no fault of their own.

Prior to the passage of HAVA in 2002, most states, but not all, offered some form of provisional ballot. No state gave the voter the right to find out the status of their ballot after the election, as required by the federal act. In Florida, thousands of voters who had been wrongly pegged as felons were denied the right to vote. Lacking any recourse, Florida election officials sent those voters home – and cemented the state's place as ground zero for arguably the most controversial presidential election in American history.

There were dozens of factors that affected whether ballots were counted or not counted. In some cases, the data did not fit any known assumptions.

Our national survey found that 70 percent of provisional ballots were counted in states with rules that allowed those ballots to be considered if cast anywhere in the correct jurisdiction.[4] That number dropped to 62 percent in states limiting consideration of provisional ballots to those cast in the correct precinct.

Some states with seasoned statewide voter registration databases had fewer provisional ballots, possibly indicating fewer problems managing new applications.

For example, Alaska and Michigan both have statewide voter registration databases. However, Michigan, which ranks 8th nationally in population, distributed 5,610 provisional ballots. Alaska, ranked 47th in population, issued more than 23,000 provisional ballots. In terms of the total vote count, Alaska led the nation in provisional votes, with the fail-safe ballots accounting for more than 7 percent of the state's vote total, compared with Michigan, where provisional ballots accounted for less than one-tenth of 1 percent of the vote.[5]

For more details, see the "Key Findings" section on page 5 and the tables beginning on page 11.

Provisional voting can and did work for many on Nov. 2. But the disparities in the application of the law have been of continuing concern to lawmakers, policy experts and civil rights advocates. This study seeks to explore what those differences in application of federal law meant to voters in all 50 states and the District of Columbia. It is by no means comprehensive enough to offer a final say on the use of provisional ballots in 2004. But it does begin to reveal some trends that could prove significant as HAVA implementation moves forward.

Executive Summary

November 2, 2004 marked the first time all states offered federally-mandated provisional ballots in a general election. While the use of fail-safe, affidavit or provisional ballots was not new to more than two-thirds of states before the passage of the Help America Vote Act (HAVA), the requirements enacted by Congress requiring notification for voters of the dispensation of their provisional ballot were.

The use of provisional ballots could, in one sense, be considered a national success. Nearly 1.1 million provisional ballots were counted out of 1.6 million cast. Many of those voters would have been otherwise disenfranchised.

But that success was not unqualified. The study of provisional ballot statistics from around the country revealed that even a national standard does not mean uniformity. The lack of uniformity has raised concerns from civil rights groups to the halls of Congress. And for good reason – if the intention of HAVA was to make sure every vote counted, the national mandate for provisional ballots did not always achieve that goal.

The pre-election controversy over how provisional ballots would be cast and counted continues. Ballots counted in one state would be discarded in another. In one state, poll workers would issue ballots to voters in the wrong precinct – sometimes knowing those ballots were destined to be disqualified. In some counties, election officials defied state law or practice to count ballots that in other counties in the same state would not be counted.

Voters in some counties were given a chance after the election to fix problems with their registration forms that kept them off the rolls – offering essentially a second chance to have their votes counted. Most, however, did not have that opportunity and instead had their votes discarded, sometimes for technicalities such as an unchecked box on a registration form.

In a number of key battleground states that lacked safeguards previously, including Florida, Ohio and Pennsylvania, the federal rules ensured that voters who would otherwise be turned away from the polls if their names did not appear on registration rolls at least had the opportunity to cast a ballot and have their vote counted if they were found to be properly registered voters.

Among the findings in the report:

THE DATABASE EFFECT

The use of statewide voter registration databases did not necessarily decrease the percentage of list omissions. There is little difference between the percentages of provisional votes counted in the 17 states with statewide voter registration databases than the states without them. However, statewide voter lists might have led to fewer provisional ballots being cast.

VOTE COUNTING VARIED WIDELY

Around the country, the percentage of provisional ballots counted ranged from a national high in Alaska of 97 percent to a low of 6 percent in Delaware. Further study is needed to determine why some states counted so many and some so few. State practices could play a significant role.

IN-PRECINCT VS. OUT-OF-PRECINCT RULES

Whether a state accepted a provisional ballot cast outside of a voter's home precinct or not had some impact on the percentage of provisional ballots cast. In the states where ballots were partially or fully counted if cast in the wrong precinct but correct jurisdiction, 70 percent of provisional ballots were counted. In the states that did not count ballots cast in the incorrect precinct – and provided data – 62 percent were tabulated.

There are holes in the provisional balloting data that make comparison difficult, but not impossible. The varying state practices – when a provisional ballot is given, to whom and in what location – lead to the "fruit salad" problem where an apples-to-apples or even apples-to-oranges comparison is not possible. But this report does begin to form conclusions about how provisional balloting worked – or did not – in November 2004.

The Trouble with Numbers

Caveat Lector (Reader Beware)

By compiling and releasing the enclosed data on provisional ballot acceptance rates, *electionline.org* hopes to further inform the ongoing debate about the provisional voting requirement in the Help America Vote Act (HAVA). The research, however, has its limits.

These figures are not definitive on the subject of provisional voting, for two key reasons:

■ **States cannot be directly compared (a.k.a. the "fruit salad" problem).** Because HAVA allowed states to implement provisional voting as they saw fit – resulting in widely varying requirements and procedures nationwide – there is no way to make definitive comparisons of one state to another. Moreover, because of varying state practices, *electionline.org* collected the enclosed data at different times from different sources in different states. [Indeed, as this Briefing went to press, some states had yet to release final official provisional voting statistics.] This variation makes comparisons very difficult; as Ohio's Dana Walch says, comparing provisional ballot statistics is not like "apples to apples." In fact, given the degree of variation between (or even within) states, any provisional ballot comparison is not even apples to oranges – it is more like fruit salad.

■ **Correlation is not causation.** Throughout this Briefing, we make observations about the differences in provisional ballot rates associated with different conditions such as statewide voter databases (or lack thereof), voter identification requirements or "in-precinct" voting rules. As noted in our key findings, some of these conditions appear to be associated with different acceptance rates of provisional votes between states. It does not mean, however, that such conditions "cause" increases or decreases of provisional ballot acceptance rates – such conclusions can only be drawn after a more careful examination.

Why, then, compile these figures at all?

The answer is that this first analysis serves to identify areas of future inquiry for policymakers and election officials on the subject of provisional voting.

For example, the figures suggest that states without statewide voter databases count only a slightly higher percentage of provisional ballots (68 percent) than states with such databases (65 percent). This small difference would seem to run counter to the conventional wisdom that new databases will significantly reduce the impact of provisional voting.

Yet, upon closer examination, we see that fewer provisional ballots were cast in states with databases – partly because several larger states have yet to develop databases (such as California and Ohio), but perhaps also because the database states have the ability to screen out voters who should not vote provisionally. And in states where databases are new, there is also the implementation problem – as Election Assistance Commission member Ray Martinez noted at the recent hearing in Columbus, Ohio, such new databases sometimes create more problems than they solve in the short run.

In any event the lack of clear statistical separation between database and non-database states should serve as a signal to policymakers and researchers to actually test the belief that better lists will reduce the impact of provisional voting – and if so, to identify more concretely if such lists will inform voters of the right (or lack thereof) to cast a ballot.

Provisional voting has become a politically and emotionally-charged issue, with partisans and advocates debating its impact on the tradeoff between access and integrity in the voting process. By identifying potential linkages between certain conditions and provisional voting, the preliminary numbers in this Briefing – messy, incomplete and admittedly imprecise – nonetheless suggest ways in which election reform stakeholders across the spectrum can focus the debate on HAVA's provisional voting requirement.

To put it another way, these figures are not the final word on HAVA's provisional voting requirement – but they are intended to help move the conversation forward.

Key Findings

Thousands of voters in Florida lost their voting rights in 2000 because of administrative errors and database problems. State law had no remedy for voters missing from registration rolls. Qualified voters – most often African Americans – were sent home, disenfranchised by registration roll mistakes caused by a private company managing a purge. Under the radar, safeguards were lacking in other states as well.

The outrage was widespread and bipartisan. Congress passed the Help America Vote Act (HAVA) in 2002, sweeping legislation responding to the troubled 2000 vote that included mandating the use of provisional ballots nationwide.

The rules, though not new to more than two-thirds of the states (not including, of course, Florida), nonetheless codified the national minimum standard allowing those whose names are not on voter lists but believe they are registered to cast ballots that could be checked later to verify a voter's eligibility.[4]

The provisional ballot mandate was the most widely hailed aspect of federal election reform, touted as a cure to some of the problems that plagued Florida in 2000.

Good intentions, however, did not necessarily lead to good policy. At least that's how many organizations, lawmakers and politicians around the country viewed HAVA's rather unspecific provisional voting rules.

Good intentions did not necessarily lead to good policy. At least that's how many organizations, lawmakers and politicians around the country viewed HAVA's rather unspecific provisional voting rules.

It became clear well before November 2 that provisional ballots would be dealt with differently in different states. National standards, even those seeking to achieve precisely the same goal, did not mean uniformity. To the contrary, provisional voting – once a bipartisan goal in the wake of 2000 – became one of the most contentious election administration issues before, during and after November 2 and led to litigation, legislation and calls to federally standardize the process.

Provisional ballots in 2004

Despite the controversy, provisional ballots could be considered a success. Over 1.6 million provisional ballots were cast and nearly 1.1 million, or 68 percent, were counted.[5] Unlike in 2000, there were no reports of large numbers of voters being turned away at the polls. To the contrary, in some states, large numbers of voters stood in long lines at the polls, waiting because there were too many of them and too few machines.

electionline.org's survey of provisional ballot results had some clear indications and also some challenges. Thus, the findings have some caveats.

A thorough analysis of provisional ballot data presents problems and complexities that make drawing broad generalizations difficult. "Comparing provisional ballot numbers between states is not comparing apples to apples," stated Dana Walch, election reform project manager in Ohio.[6]

Those difficulties and differences can be defined in categories – who gets a ballot, which ballots are counted and what laws for fail-safe ballots existed prior to the passage of HAVA.

Who receives provisional ballots and which provisional ballots are counted vary from state to state. Sometimes, counting rules even varied over county lines.

Who gets a provisional ballot?

In many states, the universe of voters who could potentially receive provisional ballots is much larger than just those voters who claim they are registered to vote but are not on precinct rosters. HAVA also

Key Findings

states they can be issued when an election official claims an individual is not eligible to vote.

Many states issue provisional ballots to voters who do not show ID but are required to do so, either because of HAVA's minimum standard or because of other state law. There are other reasons for the ballots to be issued as well – to voters who are challenged or if the poll hours have been extended.

Whose ballot gets counted?

Whether a provisional ballot was counted relied largely upon the home state of the voter.

In 28 states, a provisional ballot cast in the wrong precinct was not counted. In 17 states, a ballot cast in the wrong precinct but correct jurisdiction would be counted.[8] This disparity in state practice – more than any other election reform issue – triggered a number of lawsuits in battleground states in the weeks and months leading to the November election.

In the post-election period, the issue has led some at the state and federal level to call for national standards of counting provisional ballots. Kay Maxwell, president of the League of Women Voters, told *The Associated Press* that her organization is urging a reconsideration of the precinct-only rules limiting pro-

Provisional Ballot Notification Process

The Help America Vote Act (HAVA) requires every state to "establish a free access system (such as a toll-free telephone number or an Internet Web site) that any individual who casts a provisional ballot may access to discover whether the vote of that individual was counted, and, if the vote was not counted, the reason that the vote was not counted."[9]

However, it too has been implemented differently in different states. Which free-access system or systems are used, when information is available to voters and whether or not the information is available from the county or state level differs across the country.

States were left with some leeway on how to meet the free-access system requirement. A toll-free number and/or Web site as mentioned in HAVA are used by a number of states, but many also use written notification, either in conjunction with one of the other systems or on its own.

Texas, for example, sends out written notification 10 days after the election.[10] An official with the Texas Elections Division told *electionline.org* that counties could choose to use a Web site or toll-free number, but none of them do so at this time.[11]

The length of time that the states have to make the information available also differs by state. By statute, Alaska has 60 days after the certification of an election to send a letter to the voter[12] and has 30 days to make the information available through a toll-free number, whereas Alabama does it within 10 days as a matter of policy, not law.

Pennsylvania's Web site has provisional ballot information available for most counties three days after the election,[13] while North Carolina has their information available eight to 10 days after the election.[14]

Virginia has a toll-free number provisional voters can use to check the status of their ballots. Those whose ballots did not count receive a letter, but anyone can call the number. Information is available several days after the election, depending on when the local electoral boards end their meetings to determine the status of the ballots. Provisional voters and political party officials have the right to be present at those meetings in order to present evidence either for against the counting of specific provisional ballots.[15]

Other states also leave the notification process up to the counties, including (but not limited to) Alabama, Arkansas, Arizona and Washington.

Key Findings

visional voting in more than half of the states.

"We felt strongly that individuals who ended up in their so-called wrong precinct … they should have been able to cast ballots for president and vice president and any statewide offices," Maxwell said. "If it's a problem for even a couple of people, then it's a problem that needs solving."[14]

However, leaving this issue up to the states was by no means unintentional. During the Senate debate over HAVA, Sen. Christopher Dodd, D-Conn., stated, "whether a provisional ballot is counted or not depends solely on state law, and the conferees clarified this by adding language in section 302(a)(4) stating that a voter's eligibility to vote is determined under State law."[15]

Prior to the 2004 election, approximately two-thirds of the states were using some form of provisional voting, meaning laws and mechanisms were in place that already varied from state to state.[16]

The provisional voting experience

With state-by-state differences in mind, data from the 2004 election still can provide some general insights into the experience nationally using provisional voting.

■ *Counting varied*

Alaska had the highest percentage of provisional ballots cast with 97 percent and five other states counted more than three-quarters of their provisional ballots – Oregon, Washington, Nebraska, Ohio and Colorado.

The lowest percentage of counted provisional ballots came from Delaware which tallied only 6 percent. Five other states counted 15 percent or fewer of their provisional ballots – Hawaii, Oklahoma, South Dakota, Kentucky and Indiana.[17]

■ *The 'good database' effect?*

Five of the six states that had the lowest percentage of provisional ballots cast have statewide registration databases in place. Indiana was the sole exception.

Prior to the November 2004 election, conventional wisdom among election experts was that a healthy statewide voter registration database would reduce errors. That would, in turn, lead to a reduced need for provisional ballots. Further, "good" statewide databases would mean fewer mistakes in list maintenance.

The same conventional wisdom also suggests that those seeking provisional ballots in states with good databases probably were not properly registered, filled out a form incorrectly or perhaps were never registered at all.

The preliminary data does not support convention wisdom.

When comparing states that had statewide voter registration databases in use during the November election with those that did not, there is little difference in the percentage of ballots counted. In states with databases, 65 percent of provisional ballots were counted. In states without databases, 68 percent of these ballots were counted.

■ *Number of ballots issued*

Several states issued a large number of provisional ballots. More than 3.5 percent of votes cast for highest office in three states and the District of Columbia were provisional ballots.

Ned Foley, a law professor at Ohio State University, said he wondered if in states with low rates of provisional ballot use, voter registration data was handled better.

Whether a provisional ballot counted relied largely upon the home state of the voter.

"Maybe states with lower usage rates were able to put out fires ahead of time," Foley told the Election Assistance Commission in February 2005.[18]

■ *In-precinct vs. out-of-precinct rules*

In the states where ballots were counted or partially counted if they were cast in the wrong precinct but correct jurisdiction (county, township), 70 percent of provisional ballots cast were counted. Eleven of these states counted more than 50 percent of these ballots.

Key Findings

In the states that did not count provisional ballots cast in the wrong precinct (and provided data), 62 percent of the ballots counted. Sixteen of these states counted fewer than 50 percent of these ballots.

■ *Election-day registration*

Six states – Idaho, Maine, Minnesota, New Hampshire, Wisconsin and Wyoming – have election-day registration and are exempt from HAVA provisional ballot rules. Four of these states do not use provisional ballots – Idaho, Maine, Minnesota and New Hampshire.[23]

Wisconsin and Wyoming, however, use provisional ballots for first-time voters who were not on the voter list and do not have identification. Both states had small numbers of provisional ballots cast and a low percentage of provisional ballots counted – Wisconsin counted 32 percent of its 373 provisional ballots and Wyoming counted 25 percent of its 94 provisional ballots.[24]

State-by-state variation

A brief examination of how provisional voting is handled in several states demonstrates just how varied the process is.

Ohio, arguably the most watched state during the 2004 election, was one of five states, along with Colorado, Florida, Michigan and Missouri, that faced a lawsuit over the counting of provisional ballots cast in the wrong precinct. The court ruled for the state and agreed that ballots cast outside the correct precinct should not be counted.

Dana Walch stated the high number of provisional ballots cast – over 150,000 – could be at least partially explained by the state's policy of issuing provisional ballots to voters who moved and did not update their registration forms. Those voters were eligible to have their ballots counted.[25]

> Maybe states with lower usage rates were able to put out fires ahead of time.
>
> – Ned Foley, Ohio State University.

In the opposite case – an unusually small number of provisional ballots cast and/or counted – state law or practice can adequately explain the numbers.

Vermont, one of the least populous states, had an extraordinarily low number of provisional ballots cast – 101 cast, 37 counted. The state avoids issuing provisional ballots to most by allowing voters to use a sworn affidavit at the polling place on Election Day and vote a regular ballot.[26]

In Pennsylvania, reports of confusion about registration and provisional voting surfaced. According to newspaper reports, fewer than 50 percent of provisional ballots cast were counted. The number was even lower in some mid-state counties.

"Some people thought they could just come in the day of the election and vote with a provisional ballot. I also think a lot thought they were registered and they actually weren't," Steven G. Chiavetta, director of Dauphin County's elections and registration bureau told *The Patriot News*.[27]

In-state variation

Not only does the question of whose ballot gets counted vary from state to state, it sometimes varies even within a state.

In Arizona, a state that requires provisional ballots be cast in the correct precinct to be counted, at least two counties, Gila and Pinal, counted provisional ballots cast in the wrong precinct.[28]

Illinois had a similar issue. During the state's presidential primaries, Illinois did not count provisional ballots cast in the wrong precinct. The State Board of Elections issued a directive for the November election instructing counties to count ballots cast in the wrong precinct for some federal races. Some counties followed the directive, while others citing state law requiring the correct precinct did not.[29]

And like everything else in election administration, procedure matters. In King County, Washington – the center of the contentious guber-

CONTINUED ON PAGE 10

Provisional Ballots Spur Activity in Congress and State Legislatures

The inclusion of provisional ballots in the Help America Vote Act was universally hailed as a major step in ensuring the right to vote for Americans who might otherwise be turned away from the polls.

As the 2004 presidential election approached, it also became clear that the varied ways in which states planned to handle the ballots could swing the election one way or the other.

A high-stakes race, new territory in election law and partisan feuding combined to produce a frenzied fight over provisional voting in the months leading up to the November vote, when advocates and others challenged provisional voting rules in five states – Colorado, Ohio, Florida, Michigan and Missouri.

At the center of the lawsuits was the method of distribution and rules for counting ballots. Some argued that ballots cast in the wrong precinct should be completely voided while others claimed that votes cast on provisional ballots for federal and statewide offices should be counted no matter where they were cast.

After the election, calls to standardize provisional ballot rules emerged, not surprisingly from those states where the ballots had the greatest impact in determining the outcome of races.

In the state of Washington, Democrats and Republicans introduced legislation that would make provisional ballots distinguishable from standard and absentee ballots. Lawmakers want the ballots to be marked by different colors in order to avoid a repeat of what occurred on Election Day in King County when more than 300 provisional ballots were improperly run through tabulating machines before the voters' registration status could be verified.

Jim Kastama, D-Tacoma, said the state must set high standards to assure public trust in elections. "You have no other choice but perfection," said Kastama, the chairman of the Senate Government Operations and Elections Committee. "To do otherwise is to say that you discount someone's vote."[10]

Lawmakers in Illinois re-opened the pre-election debate on standards for when a provisional ballot should be counted. The distribution and counting of provisional ballots in Illinois varied so widely that according to news reports only some of the state's 110 jurisdictions followed the State Board of Elections' recommendation that provisional ballots cast in the wrong precinct should still count for some federal offices.[11]

Democratic lawmakers in North Carolina passed a measure during the first week of March that affirmed a 2003 law that allows for the counting of out-of-precinct ballots cast on Election Day.[12]

At the federal level, Rep. John Conyers, D-Mich., introduced legislation that would amend HAVA to mandate that provisional ballots cast by eligible voters anywhere in a state would count. Two other bills, one proposed by Sen. Hillary Clinton, D-N.Y. and the other by Sen. Christopher Dodd, D-Conn., include provisions that would do the same.

In mid-February, Florida's Secretary of State's office recommended that those who cast provisional ballots should be given a week, instead of two days, to prove their eligibility as well as grant supervisors and canvassing boards more time to review the ballots, eliminating some of the pressure to make a decision during an election.[13]

Key Findings

CONTINUED FROM PAGE 8

natorial election – hundreds of provisional ballots were incorrectly counted in polling place counting machines before they could be verified as eligible votes.[14]

Litigation, legislation and looking ahead

Not surprisingly, the problems some states faced with provisional ballots have led to both post-election litigation and legislation.

North Carolina election officials, following state law, initially counted provisional ballots if they were not cast in the correct precinct. The state Supreme Court unanimously ruled, however, that the officials were incorrectly interpreting state law and threw out at least 11,000 provisional ballots cast in the wrong precinct. In response, Democratic lawmakers passed a measure that clearly allows for the counting of out-of-precinct provisional ballots. An appeal is likely.[15]

A similar bill has been introduced in Illinois which would require counting races for federal and statewide offices on provisional ballots cast out of precinct.[16]

Federal response to provisional ballot confusion

Several bills have been introduced at the federal level amending HAVA to require out-of-precinct provisional ballots to be counted. Sen. Hillary Clinton, D-N.Y., introduced S. 450 which states, "the determination of eligibility shall be made without regard to the location at which the voter cast the provisional ballot and without regard to any requirement to present identification to any election official."[17]

Rep. John Conyers, D-Mich., has introduced a similar bill H.R. 533 stating, "notwithstanding at which polling place a provisional ballot is cast within the state, the state shall count such ballot if the individual who cast such ballot is otherwise eligible to vote."[18]

However, a bill introduced by Sen. Mitch McConnell, R-Ky., and Sen. Christopher "Kit" Bond, R-Mo., demonstrates the ever-present partisan divide over state authority and may be an indicator of the difficult road any moves to further standardize provisional ballot rules face at the federal level.

"As we expressed throughout the debates standard requirements for elections are to be implemented by the state. On provisional voting, the language is explicit. Questions on the implementation of provisional balloting are for state legislators and election officials to decide," Bond said when he introduced the bill.[19]

Not surprisingly, state officials agree. In an open letter to Congress, the National Association of Secretaries of State urged lawmakers not to pass federal legislation creating national standards for administering elections.

"The passage of any such law would undercut the states' ability to effectively administer elections and interfere with the progress they have made in implementing election reforms. Perhaps most importantly, it would discount our country's unique political philosophy — the belief in the division of authority between state and federal governments," the letter states.[20]

> "On provisional voting, the language is explicit. Questions on the implementation of provisional balloting are for state legislators and election officials to decide."
>
> – Sen. Christopher "Kit" Bond, R-Mo.

Table 1: Provisional Ballots Cast and Counted by State

State	Cast	Counted	Percent Counted
Alabama	6,560	1,836	28%
Alaska	23,275	22,498	97%
Arizona	101,536	73,658	73%
Arkansas	7,675	3,678	48%
California	668,408	491,765	74%
Colorado	51,477	39,163	76%
Connecticut	1,573	498	32%
Delaware	384	24	6%
District of Columbia	11,212	7,977	71%
Florida	27,742	10,017	36%
Georgia	12,893	3,839	30%
Hawaii	346	25	7%
Illinois	43,464	22,167	51%
Indiana	4,029	598	15%
Iowa	15,406	8,038	52%
Kansas	45,563	31,805	70%
Kentucky	1,494	221	15%
Louisiana	5,971	2,411	40%
Maryland	48,936	31,860	65%
Massachusetts	10,060	2,319	23%
Michigan	5,610	3,277	58%
Missouri	8,183	3,292	40%
Montana	653	357	55%
Nebraska	17,003	13,298	78%
Nevada	6,154	2,447	40%
New Mexico	15,360	8,767	57%
North Carolina	77,469	42,348	55%
Ohio	158,642	123,548	78%
Oklahoma	2,615	201	8%
Oregon	8,298	7,077	85%
Pennsylvania	53,698	26,092	49%
Rhode Island	2,147	984	46%
South Carolina	4,930	3,207	65%
South Dakota	533	66	12%
Tennessee	8,778	3,298	38%
Texas	36,193	7,770	21%
Utah	26,389	18,575	70%
Vermont	101	37	37%
Virginia	4,172	728	17%
Washington	87,393	69,645	80%
West Virginia	13,367	8,378	63%
Wisconsin	373	120	32%
Wyoming	95	24	25%
TOTAL	1,626,160	1,097,933	68%

Table 2: States Ranked by Percentage of Provisional Ballots Counted

State	Cast	Counted	Percent Counted
Alaska	23,275	22,498	97%
Oregon	8,298	7,077	85%
Washington	87,393	69,645	80%
Nebraska	17,003	13,298	78%
Ohio	158,642	123,548	78%
Colorado	51,477	39,163	76%
California	668,408	491,765	74%
Arizona	101,536	73,658	73%
District of Columbia	11,212	7,977	71%
Utah	26,389	18,575	70%
Kansas	45,563	31,805	70%
Maryland	48,936	31,860	65%
South Carolina	4,930	3,207	65%
West Virginia	13,367	8,378	63%
Michigan	5,610	3,277	58%
New Mexico	15,360	8,767	57%
Montana	653	357	55%
North Carolina	77,469	42,348	55%
Iowa	15,406	8,038	52%
Illinois	43,464	22,167	51%
Pennsylvania	53,698	26,092	49%
Arkansas	7,675	3,678	48%
Rhode Island	2,147	984	46%
Louisiana	5,971	2,411	40%
Missouri	8,183	3,292	40%
Nevada	6,154	2,447	40%
Tennessee	8,778	3,298	38%
Vermont	101	37	37%
Florida	27,742	10,017	36%
Wisconsin	373	120	32%
Connecticut	1,573	498	32%
Georgia	12,893	3,839	30%
Alabama	6,560	1,836	28%
Wyoming	95	24	25%
Massachusetts	10,060	2,319	23%
Texas	36,193	7,770	21%
Virginia	4,172	728	17%
Indiana	4,029	598	15%
Kentucky	1,494	221	15%
South Dakota	533	66	12%
Oklahoma	2,615	201	8%
Hawaii	346	25	7%
Delaware	384	24	6%
TOTAL	1,626,160	1,097,933	68%

See more on page 13.

Table 3: Provisional Ballots Counted: Database Status

Statewide registration database in place

State	Cast	Counted	Percent Counted
Alaska	23,275	22,498	97%
Arizona	101,536	73,658	73%
District of Columbia	11,212	7,977	71%
South Carolina	4,930	3,207	65%
West Virginia	13,367	8,378	63%
Michigan	5,610	3,277	58%
New Mexico	15,360	8,767	57%
Louisiana	5,971	2,411	40%
Connecticut	1,573	498	32%
Georgia	12,893	3,839	30%
Massachusetts	10,060	2,319	23%
Kentucky	1,494	221	15%
South Dakota	533	66	12%
Oklahoma	2,615	201	8%
Hawaii	346	25	7%
Delaware	384	24	6%
TOTAL	211,159	137,366	65%

Statewide registration database not in place

State	Cast	Counted	Percent Counted
Oregon	8,298	7,077	85%
Washington	87,393	69,645	80%
Nebraska	17,003	13,298	78%
Ohio	158,642	123,548	78%
Colorado	51,477	39,163	76%
California	668,408	491,765	74%
Utah	26,389	18,575	70%
Kansas	45,563	31,805	70%
Maryland	48,936	31,860	65%
Montana	653	357	55%
North Carolina	77,469	42,348	55%
Iowa	15,406	8,038	52%
Illinois	43,464	22,167	51%
Pennsylvania	53,698	26,092	49%
Arkansas	7,675	3,678	48%
Rhode Island	2,147	984	46%
Missouri	8,183	3,292	40%
Nevada	6,154	2,447	40%
Tennessee	8,778	3,298	38%
Vermont	101	37	37%
Florida	27,742	10,017	36%
Wisconsin	373	120	32%
Alabama	6,560	1,836	28%
Wyoming	95	24	25%
Texas	36,193	7,770	21%
Virginia	4,172	728	17%
Indiana	4,029	598	15%
TOTAL	1,415,001	960,567	68%

Table 4: Provisional Ballots Counted: In vs. Out-of-Precinct

Provisional ballots eligible for counting if cast outside correct precinct

State	Cast	Counted	Percent Counted
Alaska	23,275	22,498	97%
Oregon	8,298	7,077	85%
Washington	87,393	69,645	80%
Colorado	51,477	39,163	76%
California	668,408	491,765	74%
Utah	26,389	18,575	70%
Maryland	48,936	31,860	65%
New Mexico	15,360	8,767	57%
North Carolina	77,469	42,348	55%
Illinois	43,464	22,167	51%
Pennsylvania	53,698	26,092	49%
Arkansas	7,675	3,678	48%
Rhode Island	2,147	984	46%
Louisiana	5,971	2,411	40%
Vermont	101	37	37%
Georgia	12,893	3,839	30%
Delaware	384	24	6%
TOTAL	1,113,338	790,930	70%

Ballots disqualified if cast outside correct precinct

State	Cast	Counted	Percent Counted
Nebraska	17,003	13,298	78%
Ohio	158,642	123,548	78%
Arizona	101,536	73,658	73%
District of Columbia	11,212	7,977	71%
Kansas	45,563	31,805	70%
South Carolina	4,930	3,207	65%
West Virginia	13,367	8,378	63%
Michigan	5,610	3,277	58%
Montana	653	357	55%
Iowa	15,406	8,038	52%
Missouri	8,183	3,292	40%
Nevada	6,154	2,447	40%
Tennessee	8,778	3,298	38%
Florida	27,742	10,017	36%
Connecticut	1,573	498	32%
Wisconsin	373	120	32%
Alabama	6,560	1,836	28%
Wyoming	95	24	25%
Massachusetts	10,060	2,319	23%
Texas	36,193	7,770	21%
Virginia	4,172	728	17%
Indiana	4,029	598	15%
Kentucky	1,494	221	15%
South Dakota	533	66	12%
Oklahoma	2,615	201	8%
Hawaii	346	25	7%
TOTAL	492,822	307,003	62%

See more on page 15.

Table 51 Percent Counted of Total Vote[4,1]

State	Cast	Counted	Percent Counted	Vote for Highest Office	% Counted of Total Vote
Alaska	23,275	22,498	97%	312,598	7.20%
California	668,408	491,765	74%	12,419,857	3.96%
Arizona	101,536	73,658	73%	2,012,585	3.66%
District of Columbia	11,212	7,977	71%	227,586	3.51%
Kansas	45,543	31,805	70%	1,187,756	2.68%
Washington	87,393	69,645	80%	2,859,084	2.44%
Ohio	158,642	123,540	78%	5,627,903	2.20%
Utah	26,389	18,575	70%	927,844	2.00%
Colorado	51,477	39,163	76%	2,129,630	1.84%
Nebraska	17,003	13,298	78%	778,186	1.71%
Maryland	48,936	31,860	65%	2,386,678	1.33%
North Carolina	77,469	42,348	55%	3,501,007	1.21%
New Mexico	15,360	8,767	57%	756,304	1.16%
West Virginia	13,367	8,378	63%	755,887	1.11%
Iowa	15,406	8,038	52%	1,506,908	0.53%
Pennsylvania	53,698	26,092	49%	5,769,590	0.45%
Illinois	43,464	22,167	51%	5,275,415	0.42%
Oregon	8,298	7,077	85%	1,836,782	0.39%
Arkansas	7,675	3,678	48%	1,054,945	0.35%
Nevada	6,154	2,447	40%	829,587	0.29%
Rhode Island	2,147	984	46%	437,134	0.23%
South Carolina	4,930	3,207	65%	1,617,730	0.20%
Tennessee	8,778	3,298	38%	2,437,319	0.14%
Florida	27,742	10,017	36%	7,609,310	0.13%
Louisiana	5,971	2,411	40%	1,943,106	0.12%
Missouri	8,183	3,292	40%	2,731,364	0.12%
Georgia	12,893	3,839	30%	3,301,867	0.12%
Alabama	6,540	1,836	29%	1,883,415	0.10%
Texas	36,193	7,770	21%	7,410,749	0.10%
Massachusetts	10,060	2,319	23%	2,912,388	0.08%
Montana	653	357	55%	450,434	0.08%
Michigan	5,610	3,277	58%	4,839,252	0.07%
Connecticut	1,573	498	32%	1,578,769	0.03%
Indiana	4,029	598	15%	2,468,002	0.02%
Virginia	4,172	728	17%	3,198,367	0.02%
South Dakota	533	66	12%	388,215	0.02%
Oklahoma	2,615	201	8%	1,463,758	0.01%
Kentucky	1,494	221	15%	1,795,860	0.01%
Vermont	101	37	37%	312,309	0.01%
Wyoming	95	24	25%	243,428	0.01%
Delaware	384	24	6%	375,190	0.01%
Hawaii	346	25	7%	429,013	0.01%
Wisconsin	373	120	32%	2,997,007	0.00%
TOTAL	1,526,160	1,097,933	68%	104,980,618	1.05%

NOTES FOR TABLES 1-5:

1. States with incomplete data - not all counties have reported provisional ballot numbers: Indiana, Pennsylvania, South Carolina and Virginia
2. No data from Mississippi, New Jersey and New York.
3. No data for states with election-day registration (Idaho, Maine, Minnesota and New Hampshire)
4. North Dakota does not require voter registration.
5. Data compiled from phone calls and emails to state election officials, data provided by the U.S. Election Assistance Commission, an electionline.org survey and press reports. For more information, see the methodology.

Snapshots of the States

(Note: As required by HAVA, provisional ballots are issued in every state if a voter's name is not on the registration list but the voter believes he or she is registered to vote.)

Alabama

CAST: 6,560 ▪ COUNTED: 1,836 (28%)

Summary: Provisional ballot issued if name is marked off voter list because he/she applies for absentee ballot, if voter does not provide the required proof of identity or voter is challenged.[6] Provisional ballot eligible to be counted if cast in correct precinct.

Alaska

CAST: 23,275 ▪ COUNTED: 22,498 (97%)

Summary: Provisional ballot issued if voter does not provide the required proof of identity and is not known by elections board[7] or if voter is challenged.[8] Provisional ballot eligible to be counted if cast in correct jurisdiction.

Arizona

CAST: 101,536 ▪ COUNTED: 73,658 (73%)

Summary: Provisional ballot issued if voter moves to a new address within the county and does not notify the election board before the deadline.[9] Provisional ballot eligible to be counted if cast in correct precinct.

Arkansas

CAST: 7,675 ▪ COUNTED: 3,606 (48%)

Summary: Provisional ballot issued if voter is challenged.[10] Provisional ballot eligible to be counted if cast in correct jurisdiction.

California

CAST: 668,408 ▪ COUNTED: 491,765 (74%)

Summary: Provisional ballot issued if voter does not provide the required proof of identity,[11] or if voter moves within the county, does not re-register, and votes at the polling place assigned to their new address.[12] Provisional ballot eligible to be counted if cast in correct jurisdiction.

Colorado

CAST: 51,477 ▪ COUNTED: 39,163 (76%)

Summary: Provisional ballot issued if voter's name is marked off the voter list because he/she applies for an absentee ballot,[13] if voter does not provide the required proof of identity,[14] or if voter moves to a new address within the state and does not notify the elections board before the deadline.[15] Provisional ballot eligible to be counted if cast in correct jurisdiction.

Connecticut

CAST: 1,573 ▪ COUNTED: 498 (32%)

Summary: Provisional ballot issued if voter is challenged or if the voter does not provide the required proof of identity.[16] Provisional ballot eligible to be counted if cast in correct precinct.

Delaware

CAST: 384 ▪ COUNTED: 24 (6%)

Summary: Provisional ballot eligible to be counted if cast in correct jurisdiction.

District of Columbia

CAST: 11,212 ▪ COUNTED: 7,977 (71%)

Summary: Provisional ballot issued if voter moves to a new address within the District and does not fill out a form before Election Day.[17] Provisional ballot eligible to be counted if cast in correct precinct.

Florida

CAST: 27,742 ▪ COUNTED: 10,017 (36%)

Summary: Provisional ballot issued if a voter registers for the first time by mail and does not provide the required proof of identity, a voter is challenged, or the voter either refuses to sign an oath as to his or her eligibility or a majority of the clerks and inspectors doubt the voters eligibility.[18] Provisional ballot eligible to be counted if cast in correct precinct.

Georgia

CAST: 12,89 ▪ COUNTED: 2,829 (30%)

Summary: Provisional ballot issued if voter registers for the first time by mail and does not provide the required proof of identity.[19] Provisional ballot eligible to be counted if cast in correct jurisdiction.

Hawaii

CAST: 34 ▪ COUNTED 25 (75%)

Summary: Provisional ballot eligible to be counted if cast in correct precinct.

Idaho

CAST: N/A ▪ COUNTED: N/A

Summary: Election-day registration.

(Note: As required by HAVA, provisional ballots are issued in every state if a voter's name is not on the registration list but the voter believes he or she is registered to vote.)

Illinois

CAST: 43,464 | COUNTED: 22,167 (51%)

Summary: Provisional ballot issued if voter is challenged and the challenge is sustained by a majority of election judges or if voter applies for absentee ballot but wishes to vote in person and does not produce the unused absentee ballot.[14] Provisional ballot eligible to be counted if cast in the correct jurisdiction.

Indiana

CAST: 4,029 | COUNTED: 598 (15%) (INCOMPLETE DATA)

Summary: Provisional ballot eligible to be counted if cast in correct precinct.

Iowa

CAST: 15,406 | COUNTED: 8,038 (51%)

Summary: Provisional ballot issued if voter registers for the first time by mail and does not provide require proof of identity[15] or voter is challenged.[16] Provisional ballot eligible to be counted if cast in correct precinct.

Kansas

CAST: 45,363 | COUNTED: 31,805 (70%)

Summary: Provisional ballot issued if voter applies for absentee ballot but the ballot was spoiled, destroyed, lost, or not received,[17] the voter is challenged,[18] voter registers for the first time by mail and does not provide the required proof of identity,[19] voter changes their name or moves within the county and does not re-register.[20] Provisional ballot eligible to be counted if cast in correct jurisdiction.

Kentucky

CAST: 1,494 | COUNTED: 221 (15%)

Summary: Provisional ballot issued if voter does not provide the required proof of identity or voter is challenged by all four precinct election officers.[21] Provisional ballot eligible to be counted if cast in correct precinct.

Louisiana

CAST: 5,971 | COUNTED: 2,411 (40%)

Provisional ballot issued if voter registers for the first time by mail and does not provide the required proof of identity.[22] Provisional ballot eligible to be counted if cast in correct parish (county).

Maine

CAST: N/A | COUNTED: N/A

Summary: Election-day registration. State uses "challenge ballots" of which all are counted. The only time challenge ballots are looked at specifically would be in the case of a recount.

Maryland

CAST: 48,926 | COUNTED: 31,860 (65%)

Summary: Provisional ballot issued if voter registers for the first time by mail and does not provide the required proof of identity, if voter applies for absentee ballot but wishes to vote in person, if voter moves to new address within the county or changes name and does not notify election board before deadline or if vote is challenged.[23] Provisional ballot eligible to be counted if cast in correct jurisdiction.

Massachusetts

CAST: 10,060 | COUNTED: 2,319 (23%)

Summary: Provisional ballot eligible to be counted if cast in correct precinct.

Michigan

CAST: 5,610 | COUNTED: 3,277 (58%)

Provisional ballot eligible to be counted if cast in correct precinct.

Minnesota

CAST: N/A | COUNTED: N/A

Summary: Election-day registration.

Mississippi

CAST: 25,975 (NUMBER DOES NOT INCLUDE TUNICA COUNTY) | COUNTED: NO INFORMATION

Summary: Provisional ballot eligible to be counted if cast in correct precinct.

Missouri

CAST: 8,183 | COUNTED: 3,292 (40%)

Summary: Provisional ballot eligible to be counted if cast in correct precinct.

Montana

CAST: 653 | COUNTED: 357 (55%)

Summary: Provisional ballot issued if voter does not provide the required proof of identity,[24] or if the voter is challenged.[25] Provisional ballot eligible to be counted if cast in correct precinct.

[Note: As required by HAVA, provisional ballots are issued in every state if a voter's name is not on the registration list but the voter believes he or she is registered to vote.]

Nebraska

CAST: 17,003 | COUNTED: 13,298 (79%)

Summary: Provisional ballot eligible to be counted if cast in correct precinct.

Nevada

CAST: 6,154 | COUNTED: 2,447 (40%)

Provisional ballot issued if voter registers for the first time by mail and does not provide the required proof of identity.[46] Provisional ballot eligible to be counted if cast in correct precinct.

New Hampshire

CAST: N/A | COUNTED: N/A

Summary: Election-day registration.

New Jersey

CAST: NO INFORMATION | COUNTED: NO INFORMATION

Summary: Provisional ballot issued if voter does not provide the required proof of identity, and if voter moves to a new address within the county or changes his/her name and does not notify the elections board before the deadline.[47] Provisional ballot eligible to be counted if cast in correct precinct.

New Mexico

CAST: 15,360 | COUNTED: 8,767 (57%)

Summary: Provisional ballot issued if voter registers for the first time by mail and does not provide the required proof of identity.[48] Provisional ballot eligible to be counted if cast in correct jurisdiction.

New York

CAST: NO INFORMATION | COUNTED: NO INFORMATION

Summary: Provisional ballot eligible to be counted if cast in correct precinct.

North Carolina

CAST: 77,469 | COUNTED: 42,348 (55%)

Summary: Provisional ballot issued if voter registers for the first time by mail and does not provide the required proof of identity.[49] Provisional ballot eligible to be counted if cast in correct jurisdiction.

North Dakota

CAST: N/A | COUNTED: N/A

Summary: No voter registration.

Ohio

CAST: 158,642 | COUNTED: 123,548 (78%)

Summary: Provisional ballot issued if voter moves to a new address within the county or from one Ohio County to another during the last 28 days before Election Day.[50] Provisional ballot eligible to be counted if cast in correct precinct.

Oklahoma

CAST: 2,615 | COUNTED: 201 (8%)

Summary: Provisional ballot issued if voter does not provide the required proof of identity, and if voter's political affiliation is disputed in a primary.[51] Provisional ballot eligible to be counted if cast in correct precinct.

Oregon

CAST: 8,298 | COUNTED: 7,077 (85%)

Summary: Provisional ballot issued if voter never received his/her mail-in ballot or if he/she wants to vote in person in a different town or county than the one in which he/she is registered.[52] Provisional ballot eligible to be counted if cast in correct jurisdiction.

Pennsylvania

CAST: 53,698 | COUNTED: 26,092 (49%)

Summary: Provisional ballot issued if a voter is voting for the first time in his/her county or has recently moved to another residence within the county and does not provide the required proof of identity, or if a voter is challenged.[53] Provisional ballot eligible to be counted if cast in correct jurisdiction.

Rhode Island

CAST: 2,147 | COUNTED: 984 (46%)

Summary: Provisional ballot issued if a voter does not provide the required proof of identity, if a voter is challenged, or if person whose name does not appear on the list of registered voters for the voting district but does appear on the community list contends he or she is voting in the correct voting district.[54] Provisional ballot eligible to be counted if cast in correct jurisdiction.

[Note: As required by HAVA, provisional ballots are issued in every state if a voter's name is not on the registration list but the voter believes he or she is registered to vote.]

South Carolina

CAST: 4,930 # COUNTED: 3,207 (65%) (INCOMPLETE DATA)

Summary: Provisional ballot issued if a voter is challenged,[77] moves to a different precinct within the county, and does not notify the county board of registration. Provisional ballot eligible to be counted if cast in correct precinct.

South Dakota

CAST: 533 # COUNTED: 66 (12%)

Summary: Provisional ballot issued if a voter does not provide the required proof of identity, he or she signs an affidavit, and his/her affidavit is challenged.[78] Provisional ballot eligible to be counted if cast in correct precinct.

Tennessee

CAST: 8,778 # COUNTED: 3,298 (38%)

Summary: Provisional ballot eligible to be counted if cast in correct precinct.

Texas

CAST: 36,193 # COUNTED: 7,770 (21%)

Summary: Provisional ballot issued if a voter does not provide the required proof of identity or if a voter has applied for a ballot by mail but has not received it.[79] Provisional ballot eligible to be counted if cast in correct precinct.

Utah

CAST: 26,389 # COUNTED: 18,575 (70%)

Summary: Provisional ballot issued if a voter is challenged.[80] Provisional ballot eligible to be counted if cast in the wrong precinct and the ballot is identical to the one that the voter would have voted if he or she appeared at the correct jurisdiction.

Vermont

CAST: 101 # COUNTED: 37 (37%)

Summary: Provisional ballot eligible to be counted if cast in correct jurisdiction.

Virginia

CAST: 4,172 # COUNTED: 728 (17%) (INCOMPLETE DATA)

Summary: Provisional ballot issued if voter registers for the first time by mail and does not provide the required proof of identity.[81] Provisional ballot eligible to be counted if cast in correct precinct.

Washington

CAST: 87,391 # COUNTED: 69,645 (80%)

Summary: Provisional ballot issued if a voter requests an absentee ballot but wishes to vote in person.[82] Provisional ballot eligible to be counted if cast in correct jurisdiction.

West Virginia

CAST: 13,267 # COUNTED: 8,378 (63%)

Summary: Provisional ballot issued if the signature on the poll slip and the registration card do not match, if a voter moves to a different precinct within the county or if a voter does not provide the required proof of identity.[83] Provisional ballot eligible to be counted if cast in correct precinct.

Wisconsin

CAST: 373 # COUNTED: 120 (32%)

Summary: Election-day registration. Provisional ballot issued if a voter registers for the first time by mail, does not provide the required proof of identity at the time of submitting the registration form, and does not do so at the polling place. In addition, if a voter's registration application was submitted as part of a voter registration drive, their application was not witnessed by an official voter registration deputy, and the voter does not provide the required proof of identity at the polling place, they are entitled to receive a provisional ballot. In order for the provisional ballot to be counted, the voter must provide the required proof of identity before Election Day, to poll workers before polls close on Election Day, or to the municipal clerk's office by 4:00p.m. the day after the election.[84] Provisional ballot eligible to be counted if cast in correct precinct.

Wyoming

CAST: 95 # COUNTED: 24 (25%)

Summary: Election-day registration. Provisional ballot issued if a voter does not have the required proof of identity when attempting to register on Election Day. The voter has until close of business the day after the Election to provide proof of identity to the county clerk. The same holds true for a challenged voter; after he/she signs an affidavit, he/she has until close of business the next day to have a proof of identity approved by the county clerk.[85] Provisional ballot eligible to be counted if cast in correct precinct.

Methodology

Information for this report was taken from primary sources – interviews with state election officials, an *electionline.org* survey of state election officials – as well as secondary sources including newspaper articles. In addition, data collected by the Election Assistance Commission in its February 9, 2005 *Testimony Before the House Administration Committee* was used.

All sources are cited in the endnotes section.

The opinions expressed by election officials, lawmakers and other interested parties in this document do not reflect the views of non-partisan, non-advocacy *electionline.org* or the Election Reform Information Project.

All questions concerning research should be directed to Sean Greene, research coordinator, at 202-338-9860.

Endnotes

1. Claussen, Nick. "Election board deals with provisional votes, employee complaint," *The Athens News*, November 18, 2004.
2. Willinsen, Christine and Kelleher, Susan, "Ballot checks vary widely across state," *The Seattle Times*, December 19, 2004.
3. Ibid.
4. Jurisdiction is generally defined as the geographic area served by one voter registrar – either county, township, or independent town or city.
5. Data is derived from information found in Table 5 and information provided by the U.S. Census Bureau at www.census.gov.
6. The Help America Vote Act (hereinafter HAVA), Public Law 107-252, § 302(a) ("If an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to cast a provisional ballot.")
7. Data for some states is not final and for other states is incomplete – not all counties had reported to the state their provisional ballot numbers. New York and New Jersey did not provide data and Mississippi had numbers for how many ballots cast but not counted. For more detailed information on sources and data collection please see the methodology section.
8. Telephone interview with Dana Walch, February 2005.
9. The remaining states have election-day registration. North Dakota does not require voter registration.
10. HAVA § 302(5)(B).
11. Texas Elec. Code § 65.059.
12. Phone conversation with Texas election official, February 2004.
13. Alaska Stat. § 15.20.207(D)(2).
14. Alaska Stat. § 15.20.207(K).
15. Phone conversation with Julie Pinto, Pa. Bureau of Commissions, Elections and Legislation, February 2005.
16. Phone conversation with Johanne McLean, Deputy Director for Administration, N.C. Board of Elections, February 2005.
17. Phone conversation with Rosanna Bencoach, Policy Manager, Virginia State Board of Elections, February 17, 2005.
18. McCarthy, John. "League president: Wrong precinct no excuse for denial of vote," *The Associated Press* as published in *The Boston Journal*, February 21, 2005.
19. 148 Cong. Rec. S10504 (October 16, 2002).
20. See *electionline.org's Election Reform Briefing: The Provisional Voting Challenge*.
21. Indiana's data is incomplete because not every county has reported provisional ballot counts to the state.
22. Foley, Neil. Testimony before the Election Assistance Commission, February 23, 2005.
23. Maine has a "challenged ballot," whereby, "a new voter who declares residency on Election Day, but does not have satisfactory proof of such residency, must be allowed to vote a challenged ballot." These ballots are unlike provisional ballots in that they are initially counted as regular ballots. They are only examined if there is a recount and the challenged ballots would affect the outcome. Maine Rev. Stat. Ann. Title 21-A-696(1).
24. Wyoming is one of only a handful of states that has detailed information on its state Web site listing the status of all 94 provisional ballots. The two main reasons for ballots not being counted – acceptable ID never provided or the voter cast the ballot in the wrong precinct. "Statewide Provisional Ballots – Wyoming Official Summary – November 2, 2004," Wyoming Secretary of State Web site, http://soswy.state.wy.us/election/2004/results/g-prov-1.pdf (last visited March 11, 2005).
25. Telephone interview with Dana Walch, February 2005.
26. Email from Kathy DeWolfe, Vermont state elections director, May 5, 2004.
27. Sherzer, Jack. "Counties toss most paper ballots," *The Patriot News*, February 14, 2005.
28. Burnette, Daniel. "Ballots Cast in Wrong Precinct Counted – Sometimes," *Arizona Capital Times*, February 7, 2005.
29. "Election officials want uniformity in provisional ballot counts," *The Associated Press*, November 21, 2004.
30. McCann, Chris. "Senate Election-Overhaul Bills Advance," *The Seattle Post-Intelligencer*, February 18, 2005.
31. "Election Officials Want Uniformity in Provisional Ballot Counts," *ABC Chicago*, November 21, 2004.

32 Robertson, Gary. "New Election, New Law are Focus in Provisional Ballot Hearing," *The Winston-Salem Journal*, March 2, 2005.

33 Kallestad, Brent. "Ha. Official Pitches Election Law Changes," *The Herald*, February 17, 2004.

34 "King County acts to avoid counting unverified provisional ballots," *Seattle Post-Intelligencer*, February 9, 2005.

35 *op.cit.*, Robinson.

36 Illinois General Assembly. HB0111.

37 S. 450.

38 H.R. 533.

39 151 Cong. Rec. S1626 (February 17, 2005).

40 National Association of Secretaries of State. "Open Letter to Members of Congress," February 7, 2005.

41 The vote for highest office data is derived from information provided by the United States Election Project at George Mason University. Total ballots cast data is not used because there is insufficient information gathering at the state level.

42 Ala. Code § 17-10A-2.

43 Alaska Stat. § 15.15.225(2)(c).

44 Alaska Stat. § 15.15.210.

45 Ariz. Rev. Stat. § 16-584(C).

46 Ark. Code Ann. § 7-5-312 (b)(1).

47 Memo from California Director of Elections John Mott-Smith, (http://www.sos.ca.gov/elections/hava_faq/hava_el_prov_ballot_req.pdf) (October 1, 2004) (updating California provisional ballot rules) (last visited March 11, 2005).

48 Calif. Election Code § 14111.

49 Colo. Rev. Stat. § 1-7.5-107(3.5)(d).

50 Colorado Secretary of State Amended Election Rules 26.2.3, (http://www.sos.state.co.us/pubs/rule_making/electionrules.pdf) (last visited March 11, 2005).

51 Colorado Secretary of State Amended Election Rules 26.1, (http://www.sos.state.co.us/pubs/rule_making/electionrules.pdf) (last visited March 11, 2005).

52 Provisional Ballot instructions, (http://www.sos.state.ct.us/ElectionsDivision/HAVA/ProvisionalBallot3.pdf) (last visited March 11, 2005).

53 D.C. Code Ann. § 1-1001.07 (j)(4)(C).

54 Fla. Stat. Title 9 Chapter 101.048.

55 Ga. Code § 21-2-417(b).

56 10 Ill. Comp. Stat. Ann. 5/18A.

57 Iowa Senate File 2269, (http://coolice.legis.state.ia.us/Cool-ICE/default.asp?Category=billinfo&Service=Billbook&frame=1&GA=80&hbill=SF2269) (last visited March 11, 2005).

58 Iowa Code, Title 2, Chapter 49.81.

59 Kan. Stat. § 25-2908 (C).

60 Kan. Stat. § 25-409.

61 Kansas Secretary of State Election Standards ; Chapter II (Election Administration) at 17 (http://www.kssos.org/forms/elections/election_standards/ChapII-ElecAdmin.pdf) (last visited March 11, 2005).

62 Kan. Stat. §25-2316c.

63 Ky. Rev. Stat. § 117.245.

64 Louisiana Secretary of State, "Provisional Voting" (http://www.sos.louisiana.gov/elections/elections-index.htm#provisional) (last visited March 11, 2005).

65 Maryland State Board of Elections, "Election Day Frequently Asked Questions" (http://www.elections.state.md.us/registered_voters/election_day_faq.html) (last visited March 11, 2005).

66 Mont. Code Ann. § 13-13-114 (2).

67 Mont. Code Ann. § 13-13-301(3).

68 Nev. Rev. Stat. § 293.3081 (2).

69 New Jersey Division of Elections, "Polling Place Poster" (http://www.state.nj.us/lps/elections/poll-place-sign-eng.pdf) (last visited March 11, 2005).

70 N.M. Stat. § 1-12-8.

71 N.C. Gen. Stat § 163-166.12 (c).

72 O.R.C. § 3503.16.

73 Phone conversation with Carol Morris, Oklahoma Elections Division, February 2005.

74 Oregon Elections Division, information provided by staff, February 2005.

75 Pennsylvania Voter Guide at 8-9 (http://www.dos.state.pa.us/voting/lib/voting/guide/voterguide.pdf) (last visited March 11, 2005).

76 Rhode Island Board of Elections, Provisional Voting, (http://www.elections.state.ri.us/provisional.htm) (last visited March 11, 2005).

77 S.C. Code § 7-13-830.

78 South Dakota Polling Place Key (http://www.sdsos.gov/Auditors/PollingPlaceKey.pdf) (last visited March 11, 2005).

79 Tex. Elec. Code § 124.

80 Utah Elec. Code § 20A 6.

81 Va. Code § 24.2-643, 653.

82 R.C.W. § 29A.04.008.

83 W.V. Code § 3-1-41.

84 Wisconsin State Elections Board, "Provisional Voting Information," (http://elections.state.wi.us/docview.asp?docid=2028) (last visited March 11, 2005.)

85 Wyo. Stat. §§ 22-1-101 through 22-29-408.

electionline.org Briefing

electionline.org, administered by the Election Reform Information Project, is the nation's only nonpartisan, non-advocacy website providing up-to-the-minute news and analysis on election reform.

After the November 2000 election brought the shortcomings of the American electoral system to the public's attention, The Pew Charitable Trusts made a three-year grant to the University of Richmond to establish a clearinghouse for election reform information.

Serving everyone with an interest in the issue – policymakers, officials, journalists, scholars and concerned citizens – *electionline.org* provides a centralized source of data and information in the face of decentralized reform efforts.

electionline.org hosts a forum for learning about, discussing and analyzing election reform issues. The Election Reform Information Project also commissions and conducts research on questions of interest to the election reform community and sponsors conferences where policymakers, journalists and other interested parties can gather to share ideas, successes and failures.

electionline.org
Your first stop for election reform information

1101 30th Street, NW
Suite 210
Washington, DC 20007
tel 202-338-9860
fax 202-338-1720
www.electionline.org

Election Reform Information Project

A Project of the University of Richmond
supported by The Pew Charitable Trusts

THE PEW CHARITABLE TRUSTS

Serving the public interest by providing information, policy solutions and support for civic life.

The Plain Dealer | Sunday, January 9, 2005

Untangling the voting controversies

Since the hotly contested presidential election, dozens of allegations of voter irregularities and conspiracies in Ohio have been made, many on the Internet. Here are several of the claims most often heard and an analysis of their veracity.

STATEWIDE

ALLEGATION	EXPLANATION
About 94,000 people chose either no one or more than one person when they voted for president. That meant their votes didn't count. In such a hotly contested race it was impossible to imagine that many people wasting a vote.	Do the math. Those 94,000 ballots are less than 1.7 percent of the total cast statewide. Experts say that's not far from the national average of 1.5 percent who vote twice or not at all for president. It's not anywhere near enough to cast doubt on the presidential race, said Edward Foley, director of the Election Law Program at Ohio State University's Moritz College of Law.
Election officials have not inspected all of those 94,000 "spoiled" ballots for pregnant or hanging chads or other signs of voter intent. Those ballots should be reviewed and counted.	There's a three-part explanation: First, Ohio law says election employees should take reasonable steps to inspect punch cards before the initial count. So ballots should have been reviewed. Second, Ohio law is specific about what counts and doesn't count as a vote. Pregnant chads don't; chads loosed at three or four corners do. That leads to the third point: reviewing punch card ballots by hand makes little difference, according to election expert Dan Tokaji, a law professor at Ohio State University. Tokaji points out that many things can go wrong with punch card ballots. They don't, for example, alert voters who have accidentally selected two people for president and allow them to correct their mistake. And double voting doesn't change upon review.
Too many provisional ballots, cast by those who believed they were registered but whose names didn't appear on voter registration rolls, were never counted. Election workers found problems with them — the voter wasn't registered, for example — and didn't enter them in the final tally.	Ohio counted a larger percentage of its provisional ballots than many other states, according to electionline.org, a nonpartisan clearinghouse for election reform information. Of the 17 states it had gathered data for by Dec. 1, Ohio counted the most — 77.33 percent. That compares to 6.38 percent in Delaware, 22.53 percent in Massachusetts and 57.52 percent in Michigan.
Exit polls showed Kerry ahead in Ohio, but Bush won the state. Votes must have been tampered with.	Two polling firms — Edison Media Research and Mitofsky International — were hired for exit-polling for ABC, CBS, NBC, CNN, Fox News Channel and The Associated Press. Joe Lenski, executive vice president of Edison Media Research, said exit polls were done at 50 precincts throughout Ohio. He said the firms are investigating results nationally, and that no evidence of fraud was found in Ohio. Lenski said states such as Vermont, Connecticut and Delaware had higher discrepancies between exit polls and election results than did Ohio. Kerry won those three states, but "no one's questioned those," he said. "There's this fiction out there that exit polls are accurate to the decimal point, and that's just not true. They're a survey, like any other survey."

COUNTY-BY-COUNTY

FRANKLIN COUNTY **Minority precincts were intentionally deprived of voting machines, which created long lines and thousands of potential voters leaving in frustration.**	Democratic and Republican election officials allocated machines based on voting patterns and estimates on where more were needed. Because of a growth and shift in population since the 2000 election, 29 precincts had been added. Election officials reviewed active voter files as of July 2004 to decide where to put the machines. William Anthony Jr., who is black, and chairs both the Franklin County Democratic Party and its elections board, said, "It broke the way it broke because the growth wasn't in the inner city, not because we wanted to disenfranchise black voters."
FRANKLIN COUNTY **People not inside some polling places by 7:30 p.m. were told to leave, even if they had waited in line for hours, violating the Voting Rights Act.**	Anthony and Mike Hackett, deputy director of the elections board, both Democrats, said no voter allegedly turned away has come forth. They said they would investigate any such complaint made to them.
HOCKING COUNTY **A repairman may have tampered with results when he showed up to check a voting machine before the recount. He found a fuse was out and replaced the fuse.**	Hocking County Prosecutor Larry Beal ordered the repairman to show reporters, the elections board, computer experts and others how he made the repair, and Beal, a Democrat, ruled that nothing fishy happened.
KNOX COUNTY **Mostly Democratic students at Kenyon College, a liberal arts school, waited nine or 10 hours to vote while students at Mount Vernon Nazarene University — more likely to support Republican candidates — had no wait.**	A late registration drive at Kenyon meant many names were added in the two weeks before Election Day, after voting machines had been assigned and programmed. Election workers had no way of predicting that the Kenyon precinct would have one of the highest turnouts in the county — almost 73 percent — said Rita Yarman, deputy director of the Knox County Board of Elections and a Democrat.
MAHONING/FAIRFIELD COUNTIES **Some voters chose Kerry but their machines registered a vote for Bush. This allegedly happened in other Ohio counties.**	Mahoning County had problems with machines early on Election Day but some machines recorded votes for Kerry when Bush was selected too, said elections Director Michael Sciortino, a Democrat. The machines not working were quickly fixed and voters corrected their mistakes — electronic machines highlight the name of the candidate so voters can catch errors before their vote is cast. Fairfield County officials say they don't know how the rumor got started about machines there. They use punch card ballots. "So if you voted for Kerry, you voted for Kerry and if you voted for Bush, you voted for Bush," said Director Alice Nicolia.
MIAMI COUNTY **On election night, vote totals changed from 31,620 to 50,235, both based on 100 percent of precincts tallied. In both counts, Bush and Kerry oddly maintained the same percentage, 66 percent to 34 percent, in Bush's favor. Even more unlikely, the margin in the higher vote total was exactly 16,000 votes, raising suspicions about the accuracy of optical-scan machines.**	Miami County officials, according to the Dayton Daily News, said the 19,000 "new" votes appeared because Ohio Secretary of State Ken Blackwell's Web site initially used incomplete results when it posted what it said were final figures. The correct numbers were sent when the error was found.
WARREN COUNTY **Some Democrats with proper identification were forced to use provisional ballots so that their ballots were subjected to closer review when counted.**	Robert Hammock, Board of Elections chairman and co-chairman of the county's Democratic Party, wasn't aware of such complaints.

INFORMATION COMPILED BY BILL LUBINGER / THE PLAIN DEALER

Ohio Secretary of State J. Kenneth Blackwell
Elections Division - 180 E. Broad St., 15th Floor, Columbus, OH 43215
Tel. (614) 466-2585 Fax (614) 752-4360 e-mail: election@sos.state.oh.us

DIRECTIVE 2005-01
January 12, 2005

- 2005-05 Attachment Bond

ALL COUNTY BOARDS OF ELECTIONS

DEPLOYMENT OF VOTING SYSTEMS

The standards under development for VVPAT equipment as required per Substitute House Bill 262, the 2004 increase in Ohio voter registrations and the increase in time required to use VVPAT machines all mitigate against this technology as a viable option for the state of Ohio. The existing Federal funding and supplemental funding from the General Assembly under SHB 262 will not be sufficient to cover the purchase of direct recording electronic (DRE) voting systems with a voter verified paper audit trail (VVPAT). I reached this conclusion following extensive research by the SOS staff.

A logical analysis of the requirements of both HAVA and SHB 262 in combination with the HAVA deadline slightly more than one year away, lead inexorably to the following conclusion. In order for the state of Ohio to be in compliance with both federal and state law within existing funding, Precinct Count Optical Scan (PCOS) voting systems are the only viable option. PCOS voting systems already approved by the Controlling Board as a part of existing contracts meet all federal and state requirements. Further, they can be purchased and deployed with currently available funds.

Therefore, I am directing the selection and use of PCOS voting systems by all county boards of election in Ohio in order to comply with requirements of HAVA and SHB 262.

During the Winter Conference, eligible vendors will be available to answer your questions regarding their PCOS voting systems and to demonstrate their products. Under SHB 262, all counties may select a PCOS system for funding from the Office of the Secretary of State. All counties must select a PCOS system no later than February 9th. The selection must be submitted to Judy Grady, Director of Election Reform, via fax at 614-752-4360. Any county that does not provide written notification of their Board's vendor selection by the February 9th deadline will result in my office selecting a vendor for your county utilizing a random selection process. You will be notified on or before February 11th of the vendor selected for your county if we are forced to make your selection.

If you have any questions regarding this directive, please feel free to contact Judy Grady, Director of Election Reform at 614-728-8361.

Sincerely,

J. Kenneth Blackwell

J. Kenneth Blackwell

Ohio Secretary of State J. Kenneth Blackwell
Elections Division - 180 E. Broad St., 15th Floor, Columbus, OH 43215
Tel. (614) 466-2585 Fax (614) 752-4360 e-mail: election@sos.state.oh.us

DIRECTIVE 2005-07
April 14, 2005

ALL COUNTY BOARDS OF ELECTIONS

SELECTION OF VOTING SYSTEMS

Pursuant to Substitute House Bill 262 (SHB 262), the standards for the Voter Verified Paper Audit Trail (VVPAT) were approved on March 24, 2005, and will take effect on April 28, 2005. In light of the significant changes that have occurred over the last few months (as discussed in greater detail in the accompanying memorandum), your county may now select a direct recording electronic (DRE) with a VVPAT (hereinafter collectively referred to as "DRE/VVPAT") as your county's primary voting system.

In order to provide your county with the opportunity to choose a DRE/VVPAT voting system, we are extending the selection deadline set forth in Directive 2005-1 until May 24, 2005. Please notify my office of the vendor and certified voting system you have selected on or before that date, so that we may move forward with the purchase of a voting system on your behalf.

Of course, the Precinct Count Optical Scan (PCOS) voting system still remains an option for your county. If you intend to select a PCOS voting system, or have previously selected a PCOS system (as most of you have) and do not wish to change that selection, we encourage you to notify us as soon as possible so that we can move forward with the purchase of that system on your behalf. If you previously selected a PCOS voting system and vendor, and we do not hear from you on or before May 24, 2005, we will assume that your selection has not changed and will move forward with the purchase of a PCOS system from the vendor you previously selected.

As a reminder, before my office will purchase the voting system you have selected, the following requirements must be satisfied:

1. If you select a DRE/VVPAT voting system, both the DRE and the VVPAT must be separately certified by ITA, the Ohio Board of Voting Machine Examiners and Compuware, by not later than May 13, 2005;

2. The selected voting system must be otherwise in compliance with the Help America Vote Act (HAVA) and SHB 262, by not later than May 24, 2005;

3. If you select a DRE/VVPAT voting system, the county must deploy in a ratio of 1:175, and

4. If the total cost of ownership of the voting system that you have selected exceeds the amount of federal and state funds allocated for the purchase and implementation of voting systems for your county, your county is responsible to make up the difference in cost for the voting system you have selected. As stated in the cover memorandum, you will soon be notified of the amount allocated for your county in a separate communication.

If you have any questions regarding this Directive, please do not hesitate to contact Judy Grady, Director of Election Reform, at 614-728-8361.

Thank you for your continued cooperation in this important endeavor.

Sincerely,

J. Kenneth Blackwell

J. Kenneth Blackwell

Mr. NADLER. Thank you.

Our second witness is Dan Tokaji. Dan Tokaji is the associate professor of law and the associate director of election law at the Ohio State University's Moritz College of Law. His recent publications include, "Early Returns on Election Reform: Discretion, Disenfranchisement, and the Help America Vote Act," which examines litigation surrounding the 2004 election; and "The Paperless Chase: Electronic Voting and Democratic Values," which analyses the legal issues arising out of the transition from paper-based electronic voting technology.

Prior to arriving at the Moritz College of Law, Professor Tokaji was a staff attorney with the ACLU Foundation of Southern California. He has appeared before several Federal and State courts, including the California Supreme Court and the United States Court of Appeals for the Sixth and Ninth Circuit.

Mr. Tokaji.

TESTIMONY OF DANIEL P. TOKAJI, ASSOCIATE PROFESSOR OF LAW AND ASSOCIATE DIRECTOR, ELECTION LAW, THE OHIO STATE UNIVERSITY, MICHAEL E. MORITZ COLLEGE OF LAW

Mr. TOKAJI. Thank you, Mr. Chairman, and Members of the Committee.

My remarks today will focus on election administration problems that arose in the course of the 2004 election, particularly in Ohio. I also want to draw some broader lessons from the experience of my State of Ohio and other States in 2004 and subsequent years.

I'll refer the Members of the Committee to my written testimony for more expansive thoughts on what needs to be done in the forthcoming election season to make sure that everyone's right to vote is protected, including the steps that the United States Department of Justice ought to be taking but hasn't for the most part taken during the current Administration.

First, Ohio's experience in 2004. On the morning of November 3rd, 2004, President Bush lead Senator John Kerry by approximately 136,000 votes out of 5.6 million cast in Ohio, the decisive State. This margin was sufficient to overcome any legal challenges that might have arisen from provisional ballots that were uncounted, ambiguously marked ballots and long lines that undoubtedly kept some citizens from voting.

Had the margin been closer in Ohio, however, we almost certainly would have seen a replay of the battles that culminated in Bush vs. Gore. With the Buckeye State rather than the Sunshine State as the backdrop, Mr. Blackwell playing the role of former Secretary of State of Florida Katherine Harris and provisional ballots replacing or supplementing punch card ballots as the dominant prop.

Despite the fact that there was no post election meltdown in 2004, there is no doubt that there was and that there remains significant room for improvement in the functioning of our election system. And it is clear that State and local officials in Ohio and elsewhere could have done a better job at implementing the requirements of State and Federal law.

I've talked about seven areas in which there were significant problems in Ohio in my written testimony today. I discuss that in

greater detail in my law review article that I've asked be supplemented to my testimony.

Let me just focus on a few of those in the time that I have left. First, voting technology. Ohio was still using punch card ballots in the 2004 election. That probably cost about 44,000 to 77,000 votes throughout the State.

Second, voter registration. There was a great deal of controversy over Secretary of State Blackwell's directive that voter registrations only be accepted if they were on 80 pound, that's heavy stock, paperweight. That directive was ultimately reversed under pressure.

Provisional ballots. This was a huge issue in 2004. I expect it is going to be a significant issue in 2008 again. One of the big controversies was so-called wrong precinct provisional ballots; that is provisional ballots cast in the wrong precinct. Secretary of State Blackwell issued a directive on this that was, for the most part, upheld in the courts.

There were also significant issues having to do with challenges to voter eligibility. A Federal District Court in Ohio issued an order against Secretary Blackwell and other election officials restraining pre-election challenges. There were also four different cases challenging election day challenges. Four courts issued orders. All of those however were ultimately stayed as late as election day.

Finally, what lessons can we draw on this? I set forth four in my written testimony. I'm going to just describe them very briefly here given the time.

First, there is a need for clear and transparent rules issued well in advance of the election. One of the big problems that we had in Ohio in 2004 were that there were a lot of directives being issued by the Secretary of State's Office within weeks or, in some cases, even days of the election that contributed to an atmosphere of confusion, not only among voters and voting rights groups but also among local election officials.

Second, partisanship in election administration remains a serious problem. Here I want to go beyond individual personalities. My goal today is not to demonize Secretary of State Blackwell or any other election official but to focus on an institutional problem. We have a situation in most States in which the chief election official is elected as a partisan official. It is not just that the umpire has a stake in the game; the umpire is actually a player for one of the teams. And as long as we have this situation in our States, we're going to continue to have accusations of partisanship leveled against chief election officials and election officials generally, Democratic or Republican.

Third, litigation can play an essential role in protecting voters rights and promoting sound election administration, including equality, and I think that was certainly true in the lawsuits that were brought against Secretary Blackwell in Ohio and lawsuits brought in other States. They did, in fact, have a significant effect in protecting voters rights, as I explain in greater detail in my written testimony and in my law review article.

Fourth, election reform remains a work in progress. I would urge that we make our decisions in the future election reform not based on rhetoric or the latest media story but on sound data and re-

search. And I fear that our election reform agendas have too often been informed by exaggerated, sometimes hyperbolic claims of fraud. That's true on both the left and on the right. On the left, it has often been accusations of stolen elections, rigged elections, sometimes voting machines. On the right, it has been exaggerated allegations of voters cheating. In fact, if you look at Indiana, a State that was mentioned earlier, in the Supreme Court's opinion, it notes that there was not a single documented instance in that State of voter impersonation, of voters going to the polls pretending to be someone they are not, the only problem that the voter identification law in that State would address.

I'll close my testimony there. I would be happy to take any further questions that the Committee has.

[The prepared statement of Mr. Tokaji follows:]

PREPARED STATEMENT OF DANIEL P. TOKAJI

July 24, 2008 My name is Daniel Tokaji. I am an Associate Professor of Law at The Ohio State University's Moritz College of Law, and Associate Director of *Election Law @ Moritz,* a group of legal scholars whose mission is to provide reliable, nonpartisan analysis of election law matters.[1] In addition, I am a co-author of the forthcoming edition of the casebook *Election Law: Cases and Materials* (4th ed. 2008). My research and scholarship focuses primarily on voting rights and election administration. I am honored to appear before you today.

My remarks today will first address the election administration problems that arose in the course of Ohio's 2004 presidential election.[2] I will then discuss some broader lessons from Ohio's experience in 2004 and subsequent years. I close with some thoughts on the proper role for the U.S. Department of Justice in this election season.

For reasons that I shall explain, there are reasons to be worried about how well the election infrastructure of Ohio and other states will bear up to the pressure that will undoubtedly be put upon it this year. Of particular concern are state voter registration systems and the procedures for provisional voting. If these procedures are not functioning properly, many voters are at risk of not having their votes counted. In addition, it is likely that voters in different counties or municipalities within a state will receive inconsistent treatment, raising equal protection concerns. Registration and provisional voting problems also exacerbate the risk of post-election litigation over the result, as occurred in Florida in 2000 and as nearly occurred in Ohio in 2004. Finally, partisanship in the administration and enforcement of voting rules—at the local, state, and federal level—continues to pose a significant threat to the integrity of elections across the country.

OHIO'S EXPERIENCE IN 2004

On the morning of November 3, 2004, President George W. Bush led Senator John Kerry by approximately 136,483 votes out of some 5.6 million cast in Ohio, the state upon which the presidential race ultimately turned. This margin was sufficient to overcome any legal challenges that might have arisen from uncounted provisional votes, ambiguously marked punch card ballots, and lengthy lines that may have discouraged many citizens from voting. But had President Bush's morning-after lead been a quarter or perhaps even half what it was, a replay of the legal battles that culminated in *Bush v. Gore*—with the Buckeye State rather than the Sunshine State as the backdrop, Ken Blackwell playing the role of Katherine Harris, and provisional ballots replacing punch-card ballots as the dominant props—would probably have ensued.

Despite the fact that there was no post-election meltdown in 2004, there remains significant room for improvement in the functioning of our election system. It is clear that state election officials, in Ohio and elsewhere, could have done a much better job at implementing the requirements of federal and state law. The issues

[1] My affiliations with the University, the College of Law, and *Election Law @ Moritz* are provided solely for purposes of identification. This testimony is offered solely on my own behalf.

[2] I have attached a copy of my article "Early Returns on Election Law: Discretion, Disenfranchisement, and the Help America Vote Act," 73 *Geo. Wash. L. Rev.* 1206 (2005), which discusses these issues at greater length than does this testimony.

that generated controversy and litigation during the 2004 election cycle included voting technology, voter registration, provisional voting, voter identification, challenges to voter eligibility, and long lines at the polling place. I will discuss each of these trouble spots in turn.[3]

Voting Technology. Studies conducted in the wake of the 2000 election demonstrated significant problems in the machinery used to cast votes.[4] By 2004, many states had made the transition to new technology which reduces the rate of votes lost due to overvotes and undervotes. There is evidence showing that approximately 1,000,000 votes were saved nationwide in 2004, due to the transition to better technology and better procedures.[5] Unfortunately, Ohio was not among those states. Approximately 72% of Ohio's voters continued to use the very same type of punch card voting equipment that Florida had used in 2000. My estimate is that between 44,000 and 67,000 Ohioans who voted in November 2004 did not have their votes counted due to the use of unreliable voting equipment. These are votes that would have been counted, if better equipment had been in place.

The good news is that Ohio has since replaced its equipment with newer technology that gives voters notice and the opportunity to correct errors, and thus reduces lost votes. The bad news is that Ohio has had difficulties with some of its new voting technology. The state's largest county, Cuyahoga, which encompasses the Cleveland era, will be moving to a precinct-count optical scan system in November's election. This will be the fourth system it has used since the 2004 election. It is worrisome, to say the least, that such a large and important county has had such difficulty in making the transition to new technology and that it will be using a new system for the first time in this critical election.

Voter Registration. In the weeks leading up to November 2, 2004, several issues arose relating to the handling of registration forms. Among the issues was what to do with registration forms in which boxes had been left unchecked, or in which certain identifying information had been omitted. But the most intense controversy concerned Secretary of State Ken Blackwell's September 2004 directive requiring that Ohio registration forms be printed on "white, uncoated paper of not less than 80 lb. text weight" (i.e., the heavy stock paper). Under this directive, forms on lesser paper weight were to be considered mere *applications* for a registration form, rather than a valid voter registration.

Although the Help America Vote Act of 2002 ("HAVA") is silent on the question of the paper-weight of registration forms, voting rights advocates argued that the directive violated the federal law, which requires that "[n]o person acting under color of law" may deny a person the right to vote "because of an error or omission on any . . . paper relating to any . . . registration . . . if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election."[6] Some local election officials stated their intent to accept registration forms regardless of the paper weight on which they were printed, despite Blackwell's directive. In the face of these objections, Secretary Blackwell's office backed down and, in late September, announced that registration forms on ordinary-weight paper should still be processed.

Provisional Voting. The implementation of provisional voting was arguably *the* story of the 2004 election. Title III of HAVA requires provisional ballots to for those eligible voters who, due to administrative error or for some other reason, appear at the polls on election day to find their names not on the official registration list.

Ohio saw significant controversy over provisional voting in 2004. The issue that garnered the most attention is whether provisional ballots may be cast or counted if the voter appears in the "wrong precinct." In several states, this issue resulted in litigation. In Ohio, Secretary of State Blackwell issued a directive in September 2004, providing that voters would not be issued a provisional ballot, unless the pollworkers were able to confirm that the voter was eligible to vote at the precinct at which he or she appeared. A federal district court issued an injunction against this order, on the ground that Secretary of State Blackwell's directive failed to comply with the requirements of HAVA. This injunction was affirmed in part and reversed in part on appeal. The Sixth Circuit upheld the district court's order, insofar as it found that the Secretary of State had not fully complied with HAVA by requiring pollworkers to determine "on the spot" whether a voter resided within the pre-

[3] Documentation for the information set forth below, including references to cases and other relevant materials, may be found in my article "Early Returns on Election Reform," 73 *Geo. Wash. L. Rev.* at 1220–39.

[4] For a summary of this research, see Daniel Tokaji, "The Paperless Chase: Electronic Voting and Democratic Values," 73 *Fordham L. Rev.* 1711, 1754–68 (2005).

[5] Charles Stewart III, "Residual Vote in the 2004 Election," 5 *Election L.J.* 158 (2006).

[6] 42 U.S.C. § 1971(a)(2).

cinct and by denying those not determined to reside within the precinct a provisional ballot altogether. But the Sixth Circuit concluded that HAVA did not require provisional ballots to be counted if cast in the wrong precinct.[7]

Although the "wrong precinct" issue received the most attention, it was one of a number of issues surrounding provisional voting that emerged in 2004. Among the others was the question of whether voters should be allowed to cast a provisional ballot, if they had requested but had not received or voted absentee ballots. This also led to litigation, with a federal court in Lucas County ordering that these voters must be given provisional ballots *(White v. Blackwell).* There was also litigation over the standards used to count provisional ballots. On Election Day 2004, a lawsuit was filed challenging the lack of clear standards for determining which provisional ballots should be counted. This case relied on *Bush v. Gore,* for the proposition that a state must set clear voting rules in advance of an election, to avoid unequal treatment of voters from county to county. The case *(Schering v. Blackwell)* was ultimately dismissed after it became clear that it would not affect the result of the 2004 election. It is quite possible, however, that the issue of unclear standards for counting provisional ballots could arise again in future elections.

Voter identification. Related to the controversy over provisional voting were issues regarding voter identification. HAVA includes a requirement that first-time voters who registered by mail show some type of identification. That may include a photo ID or another document (like a utility bill, bank statement or government document) with the voter's name and address. There are at least two ambiguities in the law, however, that emerged in 2004. The first is precisely what sort of documents qualify. The second is what happens to voters if they do not present the required ID when they appear at the polls. In 2004, Secretary Blackwell issued a directive that provisional ballots would be counted only if voters produced the required information by the time the polls closed. That directive was challenged in court by the League of Women Voters and other groups. In response, the Secretary of State softened his position, stating that provisional ballots of those lacking ID would be counted if voters either presented documentary proof of identity or provided their driver's license or last four digits of their social security number by the end of the voting day. *Challenges to Voter Eligibility.* Another major issue that emerged in the weeks preceding the 2004 general election was the challenge process for questioning voter eligibility. Many people, particularly in communities of color, saw these challenges as part of a concerted strategy of voter intimidation. Some were also concerned that these challenges would be used to tie up polling places, particularly in heavily populated urban areas.

In Ohio, civil rights advocates and the Democratic Party went to court to challenge the challenges. A federal district court issued an injunction barring pre-election challenges of some 23,000 voters. In addition, there were four separate lawsuits concerning election-day challenges to voter eligibility. These cases produced a dizzying series of court orders and appellate proceedings, leading up to and even extending into election day. Four different trial judges issued orders limiting the challenges, yet each of these court orders was reversed on appeal—one of them on the afternoon of November 2, election day.

There was an undeniably partisan dimension to much of the disagreement over challenges to voter eligibility, with Republicans asserting the need to prevent voter fraud and Democrats generally urging limitations on challengers to ensure access. While it is clearly important to discourage fraud, it is also important to clearly specify the standards and procedures for making challenges, to ensure an orderly process that will not tie up polling places or consume the time of already overburdened local election officials.

Long Lines at the Polling Place. Many Ohio voters waited for hours on or before November 2, 2004 in order to exercise their right to vote. The problems appear to have been particularly acute in some urban precincts in Franklin County, where voters reported waiting for up to four or five hours. And at one polling place near Kenyon College in Knox County, Ohio, voters reportedly waited as long as ten hours. These lines posed a special difficulty for working people who could not be away from their jobs for that long, and for parents of younger children. It will probably never be known how many people were discouraged from voting, either because they arrived at the polling place to find lines stretching around the block or because they heard about how bad the lines were and thus never went to the polls in the first place.

On election day in 2004, a lawsuit was brought on behalf of voters in Franklin and Knox counties seeking relief from the long lines *(Ohio Democratic Party v. Blackwell).* That evening, a federal district judge issued a temporary restraining

[7] Sandusky County Democratic Party v. Blackwell, 387 F.3d 565 (6th Cir. 2004).

order requiring that voters waiting in line be provided with "paper ballots or another mechanism to provide an adequate opportunity to vote," and directing that polls be kept open waiting in line. Despite the requirement to provide paper ballots to voters waiting in line, some voters in these counties waited in line for several hours after the polls closed before casting their vote.

Will we see long lines again in 2008? It is hard to know for sure. There is reason to hope that the purchase of new voting systems will reduce some of the lines that existed in 2004. On the other hand, this is likely to be a very high turnout election, with much stress placed upon our polling places. This is especially worrisome, given the desperate need for more able poll workers, particularly in larger urban jurisdictions.

LESSONS FROM THE 2004 ELECTION.

Let me now move to four overriding lessons that can be taken from the 2004 election.

First, there is a need for clear and transparent rules to ensure equal treatment of voters. Truly speaking, we have not a single election system in this country nor even 50, but thousands—consisting of all the local entities with responsibility for the conduct of elections. Perhaps the most important lesson to emerge from both the 2000 and 2004 elections is the need for each state to provide specific and uniform guidance to its local jurisdictions, to ensure some semblance of consistency among counties. Seven justices of the Supreme Court expressed the need for such clear rules in the *Bush v. Gore* decision, as it relates to the conduct of manual recounts. Regardless of how broadly one reads the holding of this case, clear rules articulated in advance of an election are desirable as a way of promoting consistent and equal treatment of voters, not only for recounts but also for other election administration practices.

In the area of provisional voting, for example, there ought to be consistent procedures and standards for determining voter eligibility across the state. It does not appear that this occurred in 2004. While 77.9% of provisional ballots were counted overall, the percentage of provisional votes counted varied dramatically among Ohio counties, from a low of 60.5% to a high of 98.5%. Such discrepancies in the percentage of provisional ballots counted tend to support an equal protection claim under *Bush v. Gore,* by suggesting that there is an unconstitutional lack of uniformity among counties

It is equally vital that the rules governing the administration of elections be transparent. Transparency was an area in which the Ohio Secretary of State's office was sorely lacking in 2004. It did not even post its directives to the counties governing the administration of elections on its website, even though these directives are obviously matters of public interest. In the controversy over whether voters who had requested an absentee ballot should be allowed to vote provisionally, the Secretary of State's office guidance came in the form of a private email just days before the election. And in some cases, such as the standards for counting provisional votes, it was not until shortly before the election that the directive was actually made public. This can only lend the appearance that the election is being run according to secret (or at least semi-secret) rules. It is absolutely vital that the rules of the game be made public and be made available to all citizens well in advance of elections. Fortunately, in Ohio at least, the Secretary of State's office has gotten much better in making directives and other official guidance public, with that information available on its public website.

Second, partisanship in election administration remains a serious problem. One of the peculiarities of the American election system is that officials elected on a partisan basis are given responsibility for running elections. In most states, the chief election official—typically the Secretary of State—is elected through a partisan process. In other states, the chief election officials is appointed by someone who is elected as a representative of his or her party.[8] So too, local officials are elected in roughly two-thirds of American jurisdictions, and party-affiliated officials run elections in almost half the jurisdictions in this country.[9] The partisanship of election administrators became a major issue in Florida's 2000 election and in Ohio's 2004 election. Although the chief election officials of both these states happen to be Republican, there have also been accusations of partisanship on the part of Democratic

[8] Richard L. Hasen, "Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown," 62 *Wash. & Lee L. Rev.* 937, 976 (2005).

[9] David C. Kimball et al., "Helping America Vote? Election Administration, Partisanship, and Provisional Voting in the 2004 Election," 5 *Election L.J.* 447, 453 (2006).

chief election officials—including Ohio, which elected a Democratic Secretary of State in 2006.

It is vitally important that we move beyond personalities, and recognize that partisanship in the administration of elections is an *institutional* problem that will require an institutional solution. One good example is the State of Wisconsin. Instead of having its elections run by a Secretary of State elected in on partisan basis, the Wisconsin's elections are run by a Government Accountability Board (GAB) which is chosen in a manner that ensure bipartisan consensus. This provides the public with greater assurance that its decisions will be made fairly, without regard for partisan consequences. Until other states adopt comparable institutional changes, accusations of partisanship are likely to dog election administrators of both major political parties.

Third, litigation can play an essential role in protecting voters' rights and promoting sound administration. There is often a tendency to bemoan the increase in election-related lawsuits that we have seen in recent years. And to be sure, it would be undesirable for every disagreement over the procedures followed in an election to wind up in court. At the same time, it cannot be denied that the courts—and particularly the federal courts—have an essential role to play in the functioning of our election system. While judges are not entirely free of ideological or even partisan biases, the federal judiciary is more insulated from partisan politics than the executive and legislative branches of government. This provides them with an independence that is absolutely vital in adjudicating election disputes, particularly those which arise under the Equal Protection Clause or other provisions of the Constitution. Even when federal courts decline to issue relief, as was the case in Ohio's 2004 disputes involving "wrong precinct" provisional ballots, litigation can play an essential role in clarifying the rules of the game.

Relatedly, it is desirable for cases challenging the procedures for voting to be brought and resolved as far in advance of the election as possible. Pre-election litigation (like we saw in 2004) is vastly preferable to post-election litigation (like we saw in 2000). Whenever possible, it is better to identify problems and resolve disagreements before Election Day, rather than cleaning up the mess afterwards.

Fourth, election reform remains a work in progress. If the 2004 election should teach us anything, it is that election reform is a process, not a destination. That process is not complete. States have now made the transition to new technology, implemented provisional ballots, and created state registration databases as required by HAVA. There are still serious issues, however, with how well these reforms are working.

One of the most frustrating aspects of election administration is the difficulty in obtaining reliable data, that will allow researchers to make sound comparisons across states and among local government entities. Another problem is the persistent shortage of resources, under which the local election officials responsible for running elections labor. There is a need for ongoing federal funding for federal elections. In return, the federal government should demand reliable information from state and local entities, so that their performance can accurately be evaluated.[10]

THE ROLE OF THE DEPARTMENT OF JUSTICE

I close with some thoughts on the appropriate role of the Department of Justice in this election season. There is no doubt that the United States Department of Justice (DOJ) has a vital role to play in ensuring that the fundamental right to vote is protected. There will inevitably be disagreements over how best to serve this overarching objective. But whatever these differences, we should be able to agree that an integral part of DOJ's historic mission is to ensure that all eligible voters are permitted to exercise their right to vote on equal terms with other citizens. It is especially important that DOJ ensure that no eligible voters are denied the right to full and fair participation in elections based on their race, ethnicity, poverty, language proficiency, or disability.

While there are many ways in which the Department can and should act to protect the right to vote, one of the most important areas of voting rights activity in this year's election is likely to be procedures that state and local jurisdictions follow in registering voters and in maintaining voting rolls. The importance of this area is the result of several factors, including the requirements of the Help America Vote Act of 2002 (HAVA), evidence that jurisdictions are not fully complying with the re-

[10] Thad Hall and I set forth this proposal in greater detail in "Money for Data: Funding the Oldest Unfunded Mandate," *available at* http://moritzlaw.osu.edu/blogs/tokaji/2007_06_01_equalvote_archive.html.

quirements of the National Voter Registration Act of 1993 (NVRA), and state laws that have been enacted in recent years that change registration procedures.

Although voter registration is mostly a state and local matter, there are some important federal legal requirements in place, that are designed to ensure that all eligible voters have a fair opportunity to participate in elections. A cornerstone of these requirements is the NVRA, which requires that voter registration for federal elections be made available at state motor vehicle agencies, as well as state offices providing public assistance services and services to people with disabilities.[11] DOJ is empowered to bring civil actions in federal court to enforce the NVRA's requirements.

Unfortunately, there is evidence of noncompliance with the NVRA's requirements. A recent report found that the number of voter registration applications from public assistance agencies in 2005–06 was a small fraction of what it had been 10 years earlier—despite the fact that roughly 40% of voting-age citizens from low-income households remain unregistered.[12] Survey evidence also indicates that registration opportunities are not being made available as required by the NVRA.[13] Just last week, a federal court in Missouri issued an order requiring that state to comply with the requirement that public assistance agencies provide opportunities for registration.[14]

Put simply, a disproportionate number of poor Americans are not being registered as reuqired by federla law. Unfortunately, this is an area in which DOJ has done a poor job during the current administration. It has done relatively little to make sure that states are making registration opportunities available as federal law requires.[15] Nonprofit advocacy organizations, which lack the investigation and enforcement resources of the federal government, have been left to pick up the slack.

Another priority is to ensure that voters names are not wrongly removed or omitted from state registration lists. This is not merely a theoretical problem. The highly regarded 2001 report of the Caltech/MIT Voting Technology Project found that this was probably the greatest source of lost votes in the 2000 presidential election, with 1.5 to 3 million voters affected by registration errors—probably more than the number of people affected by antiquated voting equipment.[16] Despite all the changes in the past few years, the accuracy of voter registration lists remains a problem. Evidence for this lies in the relatively high number of provisional ballots in some states, which are required if a voter appears at the polls and finds that his or her name does not appear on the registration list. In my own state of Ohio, for example, the percentage of voters casting provisional ballots actually increased between the 2004 and 2006 general elections.[17] Data from the Ohio Secretary of State's office show that the percentage of people voting provisionally was higher still in the 2008 primary.[18]

No eligible voter should be denied the right to vote and have that vote counted due to a faulty registration list. This basic and undeniable principle is embodied in both the NVRA and HAVA. The NVRA imposes important limitations on voters being "purged" or otherwise having their names wrongly removed from the voting rolls, including a restriction on the systematic removal of voters within 90 days of a federal election.[19] HAVA requires that every state have in place a computerized "statewide voter registration list," commonly referred to as a "statewide registration database."[20] The idea behind this list was to make voter registration lists more accurate, thereby ensuring that eligible voters are not denied the right to vote due to faulty lists while at the same time protecting the integrity of the registration process. HAVA also includes requirements designed to ensure that voters names are

---

[11] 42 U.S.C. §§ 1973gg-3, 1973gg-5.

[12] Douglas R. Hess & Scott Novakowski, *Neglecting the National Voter Registration Act,* 1995–2007, at 1 (2008).

[13] Id.

[14] ACORN v. Scott, Case No. 08-CV-4084-NKL, Memorandum and Order (July 15, 2008), *available at* http://moritzlaw.osu.edu/electionlaw/litigation/documents/Scott-Order-7-15-08.pdf

[15] *Id.* at 13; *see also* U.S. Department of Justice, Civil Rights Division, *Cases Raising Claims Under the National Voter Registration Act,* available at http://www.usdoj.gov/crt/voting/litigation/recent_nvra.html#cibola.

[16] Caltech/MIT Voting Technology Project, Voting: *What Is, What Could Be 9* (2001)

[17] Steven F. Huefner, et al., *From Registration to Recounts: The Election Ecosystems of Five Midwestern States* 32 (2007) (showing increase from 2.8% to 3.1% from 2004 to 2006).

[18] Information released by the Secretary of State's office shows that approximately 3.4% of Ohioans cast provisional ballots (123,432 provisional ballots were issued, out of 3,603,523 total ballots cast). Ohio Secretary of State, "Absentee and Provisional Ballot Report: March 4, 2008," available at http://www.sos.state.oh.us/SOS/elections/electResultsMain/2008ElectionResults/absentProvRep ort03042008.aspx.

[19] 42 U.S.C. § 1973gg-6.

[20] 42 U.S.C. § 15483.

not wrongly removed from the rolls. Among its requirements relating to list maintenance are that "*only* voters who are not registered or who are not eligible to vote" be removed, and states have in place "[s]afeguards to ensure that eligible voters are not removed in error from the official list of eligible voters."[21]

Here again, there is reason for concern that the requirements of federal law are not fully being complied with. One report, based on a survey of the states, found that many states have adopted registration list practices that "create unwarranted barriers to the franchise."[22] One of the most serious problems is overly stringent "matching" protocols, under which voters names are deleted if they do not perfectly match information available in other databases (such as motor vehicle records). The problem is that data-entry errors, such as misspellings or the inversion of first and last names, can result in voters erroneously being removed from voting lists. Such issues have already spurred lawsuits brought by private parties.[23] Unfortunately, the main thrust of DOJ's enforcement efforts in the current administration, when it comes to voter registration, has been on requiring states to remove purportedly ineligible voters from the rolls. The problem is that overly aggressive purges can result in eligible voters being wrongly excluded.

A final topic of concern in this area pertains to state laws that impede the activities of groups engaged in voter registration efforts. While public agencies have an important role to play in registering voters, much of the responsibility still lies with non-governmental organizations like the League of Women Voters. This is sometimes referred to as "third-party registration" though I prefer and will use the term "non-party registration," since it involves activities undertaken by groups that are not affiliated with political parties. In Florida and Ohio, private lawsuits have been filed to challenge state laws restricting non-party registration efforts. In both cases, federal courts issued orders enjoining those laws.[24] This too is an area to watch in 2008, as it is quite possible that there will be similar laws enacted in 2008. On this and other voter registration matters, it would be helpful for DOJ to stand up for the rights of voters, as it has historically done, so that all eligible citizens may freely register, vote, and have their votes counted.

Having discussed what I think DOJ *should* do, in the 2008 election cycle, let me close with a few thoughts on what DOJ should *not* do. In the last few years, there has been growing concern regarding the "politicization" of the Justice Department. Many commentators, including a number of former DOJ employees, have alleged that the Department's actions—particularly in the area of voting rights—were driven by partisan interests rather than the rights of voters.[25] There have been numerous media reports on personnel and litigation decisions reportedly influenced by partisan politics, including dubious voter fraud prosecutions and retaliation against U.S. Attorneys who failed to bring such prosecutions.[26] I have been among those expressing concern about the role of partisan politics in DOJ's actions, such as:

- An undue focus on pursuing allegations of voter fraud rather than expanding access, most notoriously a prosecution brought just before the contested 2006 senatorial election in Missouri in violation of longstanding DOJ policy;
- The DOJ's decision to file an amicus brief in a controversial 2004 case involving provisional voting, which included an argument that private citizens should not be allowed to sue to protect their rights under HAVA;

---

[21] 42 U.S.C. § 15483(a)(2)(B)(ii) & (a)(4)(B) (emphasis added).

[22] Justin Levitt, et al., *Making the List: Database Matching and Verification Processes for Voter Registration* (2006).

[23] *See, e.g.,* Washington Association of Churches v. Reed, W.D. Wash., Case No. 2:06-cv-00726-RSM. This case resulted in a stipulated final order which, along with other documents from the case, is available at http://moritzlaw.osu.edu/electionlaw/litigation/wac.php.

[24] *See* League of Women Voters of Florida v. Cobb, S.D. Fla., Case No.06-21265-CIV-JORDAN; Project Vote v. Blackwell, N.D. Ohio, Case No.1:06-cv-01628-KMO. Documents from both these cases may be found at http://moritzlaw.osu.edu/electionlaw/litigation/index.php.

[25] *See, e.g.,* Joseph D. Rich, "Changing Tides: Exploring the Current State of Civil Rights Enforcement within the Justice Department," Testimony for the House Judiciary Committee, March 22, 2007; Testimony of Dr. Toby Moore, Oversight Hearing on the Voting Rights Section of the Civil Rights Division of the U.S. Department of Justice Before the Subcommittee on the Constitution, Civil Rights and Civil Liberties, Committee of the Judiciary, U.S. House of Representatives, October 30, 2007; Mark A. Posner, "The Politicization of Justice Department Decisionmaking Under Section 5 of the Voting Rights Act: Is It a Problem and What Should Congress Do?," January 2006.

[26] *See, e.g.,* Jason McClure, "DOJ Probes Turn to Civil Rights Division," *Legal Times,* June 4, 2007; Gregg Gordon, "Justice Department Actions Expected to Draw Congressional Scrutiny," McClatchy Newspapers, June 4, 2007; Dan Eggen & Amy Goldstein, "Voter-Fraud Complaints by GOP Drove Dismissals," *Washington Post,* May 14, 2007; Jeffrey Toobin, "Poll Position: Is the Justice Department Poised to Stop Voting Fraud—or to Keep Voters from Voting?," *The New Yorker,* September 20, 2004.

- An implausible "interpretation" of HAVA in 2005, which would have allowed states to deny a provisional ballot to voters lacking identification, a position from which the Department ultimately backed away; and
- The preclearance of Georgia's exceptionally restrictive voter identification law in 2005, contrary to the recommendation of career staff.[27]

There can be no question that the DOJ's reputation has been tarnished by the revelations that have emerged in the past year or so. For this reason, it is vitally important that, in the future, the Department be especially careful to avoid even the appearance of partisanship in the discharge of its responsibilities. The focus of the DOJ's efforts should be on expanding access for all voters—including racial minorities, language minorities, and people with disabilities—rather than on taking actions that tends to chill registration and participation or that might be perceived as advancing partisan interests.

Thank you for giving me the opportunity to testify before you.

Mr. NADLER. I thank the witness.

Our final witness in this panel is Cleta Mitchell. Cleta Mitchell is a partner and member of the public affairs practice at Foley & Lardner L.L.P. She litigates before the Federal Election Commission and similar Federal and State enforcement agencies. From 1976 to 1984, she served in the Oklahoma House of Representatives and was Chairwoman of the House Appropriations and Budget Committee. In 1991, Ms. Mitchell became director and general counsel of the Term Limits Legal Institute in Washington, D.C.

Ms. Mitchell, you're recognized for 5 minutes.

TESTIMONY OF CLETA MITCHELL, ESQ., PARTNER, FOLEY & LARDNER, LLP

Ms. MITCHELL. Thank you, Mr. Chairman.

I am an attorney, as you said. I specialize in the area of political law which I describe to people as the business and regulation of politics, lobbying, public policy and elections. I've been involved in law and politics for more than 30 years.

And it is a privilege, Mr. Chairman, for me to be here today to discuss with the Committee America's elections and voting process.

The primary argument seemingly at the heart of this hearing and every discussion of voting issues is a fundamental disagreement on the following questions: Is there or is there not voter fraud? Is voter fraud a myth or a fact?

Well, Mr. Chairman, my answer to those questions is that voter fraud is real. It is not a myth. There are people in this country who deliberately calculate ways to illegally enhance the votes cast for their candidates. And the public record is chock full of examples of illegal activities surrounding our voter registration systems and our voting processes.

Political scientist Larry Sabato and reporter Glen Simpson in 1996 in their book, "Dirty Little Secrets: The Persistence of Corruption in American Politics," wrote, "voting fraud is back and becoming more serious with each election cycle."

They also write, "the fact that fraud is generally not recognized as a serious problem by the media creates the perfect environment for it to flourish. The role played by the news media deserves a

[27] *See* Daniel P. Tokaji, "The Politics of Justice," May 22, 2007, available at http://moritzlaw.osu.edu/blogs/tokaji/2007_05_01_equalvote_archive.html. *See also* Daniel P. Tokaji, "If It's Broke, Fix It: Improving Voting Rights Act Preclearance," 49 *Howard L.J.* 785, 798–819 (2006) (discussing allegations of partisanship in the DOJ's exercise of its preclearance possibilities in the 1990s and 2000s).

special comment. Many of the stories we reviewed received little to no national press attention, even when the local media outlets carried the news accounts. Partly, as noted at the outset, this results from the mistaken belief among journalists that vote fraud is no longer a serious problem."

Mr. Chairman, you've labeled this hearing, Lessons Learned in the 2004 Presidential Election. I would also like to discuss the 2004 election and lessons learned but not to confine to the Presidential election only. And I would also like to point to examples of election fraud in 2000, in 2002, and 2006, because all of these elections offer some lessons to be learned, namely this, that voter fraud is alive and well in the United States, and it is getting worse, because too many officials, partisans and the media do not take it seriously.

In my testimony I have submitted examples of fraud in Oklahoma in 2004 in a U.S. Senate race; in South Dakota in 2002 and 2004, in efforts to overturn the election in those two elections; and in 2004, in the Governor's election in Washington State, where the outcome was undoubtedly changed by illegal voting activities. And those examples and others are in my written testimony.

But for my oral comments here today, I want to focus on one organization which is the single largest perpetrator of voter fraud in this country and should be investigated by the Department of Justice and this Congress at the earliest date, and that is ACORN. I include in my testimony an article from October 30th, 2007, Seattle Times, headline, "Three Plead Guilty in Fake Voter Schemes." The story reads: "Three of seven defendants in the biggest voter registration fraud scheme in Washington history have pleaded guilty, and one has been sentenced, prosecutors said Monday, this is last October. The defendants were all temporary employees of ACORN, the Association of Community Organizations or Reform Now, when they allegedly filled out and submitted more than 1,800 fictitious voter registration cards during a 2006 Registration Drive in King and Pierce Counties."

Mr. Chairman, I would like to ask that the documents from those court proceedings be included in the permanent record of the Committee, of this hearing.

Mr. NADLER. Without objection.

[The information referred to follows:]

FILED
2007 JUL 26 AM 11:03
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

SUMMONS ISSUED
CHARGE COUNTY $200.00

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON, Plaintiff,	)	
v.	)	No. 07-C-06048-7 SEA
	)	07-C-06047-9 SEA
CLIFTON EUGENE MITCHELL,	)	07-C-06051-7 SEA
TINA MARIE JOHNSON,	)	07-C-06049-5 SEA
JAYSON LEE WOODS,	)	07-C-06046-1 SEA
RYAN EDWARD OLSON,	)	07-C-06050-9 SEA ✓
ROBERT EDWARD GREENE,	)	07-C-06045-2 SEA
KENDRA LYNN THILL, and	)	
BRIANNA ROSE DEBWA	)	INFORMATION
and each of them,	)	
Defendants.	)	

COUNT I

I, Daniel T. Satterberg, Interim Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse CLIFTON EUGENE MITCHELL of the crime of **Providing False Information on a Voter Registration**, committed as follows:

That the defendant CLIFTON EUGENE MITCHELL, together with others, in King County, Washington, during a period of time intervening between September 1, 2006 through October 8, 2006, did knowingly provide false information on applications for voter registrations under RCW 29A, to-wit: applications under one or more of the following names:

Ruby Ainsworth, Anthony Bland, Robert Bryant, Chuck Buhr, Chris Cater, Marc Condo, Kim Davis, Justin Fields, Thomas Friedman, David Gill, Michael Graham, Tim Guderian, Dennis Hastert, Alcee Hastings, Les Herring, Roscoe Howard, Paul Jacobs, William Jones, Steven Karr, John Lewis, Paul Lewis, Timothy Magladry, John McKay, Julie Middleton, Mike Miller, Timothy Paris, Donald Payne, Terry Porter, Peter Poset, Jack Potter, Rodney Qualley, Doris Rice, Carl Roberts, Ray Samuels, Ralph Scott, Wendell Simmons, Jon Smarts, Desiree Taylor, Anthony

Norm Maleng, Prosecuting Attorney
Daniel T. Satterberg, Interim Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

Thompson, Loviss Todd, Joseph Vetter, Johnny Warner, Diane Watson, Steven Wieberg, Kathy Wilson, Frank Wodsey, Roger Bean, Reginald Carter, Grelan Fortune, Rilex Greek;

Contrary to RCW 29A.84.130(1), and against the peace and dignity of the State of Washington.

COUNT II

And I, Daniel T. Satterberg, Interim Prosecuting Attorney aforesaid further do accuse CLIFTON EUGENE MITCHELL of the crime of **Providing False Information on a Voter Registration**, a crime of the same or similar character and based on a series of acts connected together with another crime charged herein, which crimes were part of a common scheme or plan, and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendant CLIFTON EUGENE MITCHELL, together with others, in King County, Washington, during a period of time intervening between September 1, 2006 through October 8, 2006, did knowingly provide false information on applications for voter registrations under RCW 29A, to-wit: applications under one or more of the following names:

Tony Gutmen, John Henrikson, Kendall Johnson, Christopher Lawler, Frekkie Magoal, Kelvin Mitchum, Robert Narron, Ronald Plumm, Mike Smith, Brenda White, Dewayne White, Lee Williams, Luke Williams, Nancy Wright;

Contrary to RCW 29A.84.130(1), and against the peace and dignity of the State of Washington.

COUNT III

And I, Daniel T. Satterberg, Interim Prosecuting Attorney aforesaid further do accuse TINA MARIE JOHNSON of the crime of **Providing False Information on a Voter Registration**, a crime of the same or similar character and based on a series of acts connected together with another crime charged herein, which crimes were part of a common scheme or plan, and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendant TINA MARIE JOHNSON, together with others, in King County, Washington, during a period of time intervening between September 1, 2006 through October 8, 2006, did knowingly provide false information on applications for voter registrations under RCW 29A, to-wit: applications under one or more of the following names:

Luke Abbate, Cole Adams, Frank Adams, Kelly Adams, Derick Adkins, Eddie Anderson, Sherly Anderson, Darnold Armstrong, Austin Bakersfield, Victor Bakersfeild, Christian Baleer,

Norm Maleng, Prosecuting Attorney
Daniel T. Satterberg, Interim Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

Marika Baldwin, Jim Barley, Jim Bernnet, Branndon Black, Harold Blake, Andrew Bosch, Felix Bosch, Jim Bosch, Jetta Bradley, Carlos Brown, Davotta Brown, Dillian Brown, Jeffrey Brown, Jenny Brown, Michael Brown, Paris Brown, Paul Brown, David Bucky, Bobby Burklow, Alan Burns, Scott Burns, Beverly Carolson, Billy Carrsons, Bob Carter, John Carter, Alica Chang, Martha Grant, Isaiah Conley, Billy Conlly, Stephan Conly, Joe Conner, Zachary Conner, Jennifer Cooper, Alex Cox, Bobby Cox, Harry Cox, Derek Cruz, Westly Cummings, Kevin Daniels;

Contrary to RCW 29A.84.130(1), and against the peace and dignity of the State of Washington.

COUNT IV

And I, Daniel T. Satterberg, Interim Prosecuting Attorney aforesaid further do accuse TINA MARIE JOHNSON of the crime of **Providing False Information on a Voter Registration**, a crime of the same or similar character and based on a series of acts connected together with another crime charged herein, which crimes were part of a common scheme or plan, and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendant TINA MARIE JOHNSON, together with others, in King County, Washington, during a period of time intervening between September 1, 2006 through October 8, 2006, did knowingly provide false information on applications for voter registrations under RCW 29A, to-wit: applications under one or more of the following names:

Avery Davis, Eddie Davis, Daniel Davis, Karen Davis, Tom Davis, Nathan Deal, Arthur Earnest, Craig Edwards, Jeniffer Edwards, Georg Ericson, David Farley, Alan Farrel, Wesley Feeney, Lance Feller, Milton Ferguson, Cameron Fisher, Benny Floyd, Bradley Floyd, Jack Forester, Jacob Foster, Thomas Garcia, Thomas Gardiner, Rodney Freling, Leo Gavin, Michael Gelbale, Collin Giles, James Giles, Jeff Gove, Jeff Hamilin, Jill Hanson, Casey Harvey, Sherman Haynes, Blake Henderson, Marty Henderson, Grace Hill, Stanly Hill, Martin Hilton, Damon Holland, Nick Hoover, Gary Houser, Luke Howards, Cheryl Hudson, Jeremy Hunter, Krystal Jackson, Mason Jackson, Heather James, Walter James, Sean Jefferson, Caleb Johnson, Desire Johnson;

Contrary to RCW 29A.84.130(1), and against the peace and dignity of the State of Washington.

COUNT V

And I, Daniel T. Satterberg, Interim Prosecuting Attorney aforesaid further do accuse TINA MARIE JOHNSON of the crime of **Providing False Information on a Voter Registration**, a crime of the same or similar character and based on a series of acts connected together with another crime charged herein, which crimes were part of a common scheme or plan, and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

Norm Maleng, Prosecuting Attorney
Daniel T. Satterberg, Interim Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

That the defendant TINA MARIE JOHNSON, together with others, in King County, Washington, during a period of time intervening between September 1, 2006 through October 8, 2006, did knowingly provide false information on applications for voter registrations under RCW 29A, to-wit: applications under one or more of the following names:

Mike Johnson, Barry Jones, Bella Jones, Carolyn Jones, Daniel Jones, Hiedi Jones, Robert Jones, Howard King, Alex Kingston, Doris Kingston, James Kobata, Jamie Koeber, Vicky Koester, Henry Kopets, Blake Larson, Michell Laton, Latisha Lawrence, Conner Lonny, Kris Markus, Kris Marllow, Kyle Martin, Andrew Martz, Jamie Mcfee, Curtis Mcnerney, James Mcnerney, Ryan Mcnight, Tamra Melvin. Joseph Michaels, Dylan Miles, Anthony Miller, Billy Miller, Eric Miller, Jessica Miller, John Miller, Wayne Mitchell, Eric Nelson, Jake Nelson, Isaac Norten, George Obryan, Brandy Oconner, Carrie Olsen, Logan Olson, Jamie Oriley, Wayne Oriley, Patrick Ownes, James Parker, Leslie Parsons, Stephen Parta, Keith Pashko, Marvin Patrick;

Contrary to RCW 29A.84.130(1), and against the peace and dignity of the State of Washington.

COUNT VI

And I, Daniel T. Satterberg, Interim Prosecuting Attorney aforesaid further do accuse TINA MARIE JOHNSON of the crime of **Providing False Information on a Voter Registration**, a crime of the same or similar character and based on a series of acts connected together with another crime charged herein, which crimes were part of a common scheme or plan, and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendant TINA MARIE JOHNSON, together with others, in King County, Washington, during a period of time intervening between September 1, 2006 through October 8, 2006, did knowingly provide false information on applications for voter registrations under RCW 29A, to-wit: applications under one or more of the following names:

Patricia Patton, Marty Peterson, Joan Petterson. Matthew Philips, Danny Ramsey, Jessie Randell, Michael Redman, Harry Reid, Reggie Reynolds, Ashly Richards, William Richards, Ethan Richardson, Brandon Riley, Phill Riley, Sherry Riley, Mariano Rivera, Justin Roberts, Mary Roberts, Aidan Robertson, Cody Robinson, Seth Robinson, Kelly Romero, Connor Rosenburg, Kareen Rush, Angel Sanders, Dale Schaefer, Dana Scholte, Lacey Shama, Tucker Shaw, Damone Simmons, Andrew Smith, Betty Smith, Crystal Smith, Deann Smith, Evan Smith, Gabriel Smith, Hunter Smith, Ian Smith, Jeremy Smith, Matthew Smith, Melinda Smith, Noah Smith, Tanya Smith, Trinity Smith, Quntine Smithson, Cindy Sofranko, Gerry Sopak, Leon Spencer, Jordan Stevens, Kevin Stevens;

Contrary to RCW 29A.84.130(1), and against the peace and dignity of the State of Washington.

Norm Maleng, Prosecuting Attorney
Daniel T. Satterberg, Interim Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

COUNT VII

And I, Daniel T. Satterberg, Interim Prosecuting Attorney aforesaid further do accuse TINA MARIE JOHNSON of the crime of **Providing False Information on a Voter Registration**, a crime of the same or similar character and based on a series of acts connected together with another crime charged herein, which crimes were part of a common scheme or plan, and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendant TINA MARIE JOHNSON, together with others, in King County, Washington, during a period of time intervening between September 1, 2006 through October 8, 2006, did knowingly provide false information on applications for voter registrations under RCW 29A, to-wit: applications under one or more of the following names:

David Stoketon, Sherry Stone, Steve Stone, Jon Swarts, Ryan Swartzer, Damon Tate, Dillion Tate, James Bradly, Jason Tate, Shavon Tate, Mark Techwood, Dale Thompson, Berry Valdez, Robert Wagner, Candace Walker, Bernie Warren, Drako Washington, Tyler Washington, Angel Waters, Luke Waters, Star Waters, Connie West, Christopher White, Ivan White, Bethany Williams, Conrad Williams, John Williams, Jenny Wilson, Lemay Wilson, Seymour Wilson, Tony Wilson, Brandon Winslow, James Woods, Thearsa Woods, Kathy Yiely, Kareena Zamira, Janet Zatkovich, Carl Blaine, Mickael Gelbale, Matt Johnson, Elijah Abernathy, Jose Ainsworth, Kenny Allen, Edward Baig, John Baker, Steve Bich, Harvey Birchfield, James Blake, Daniel Blechele, Wendy Brandley;

Contrary to RCW 29A.84.130(1), and against the peace and dignity of the State of Washington.

COUNT VIII

And I, Daniel T. Satterberg, Interim Prosecuting Attorney aforesaid further do accuse TINA MARIE JOHNSON of the crime of **Providing False Information on a Voter Registration**, a crime of the same or similar character and based on a series of acts connected together with another crime charged herein, which crimes were part of a common scheme or plan, and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendant TINA MARIE JOHNSON, together with others, in King County, Washington, during a period of time intervening between September 1, 2006 through October 8, 2006, did knowingly provide false information on applications for voter registrations under RCW 29A, to-wit: applications under one or more of the following names:

Abby Brown, Anathony Brown, Dan Brown, Nathan Campell, Pete Carol, Jodie Carter, Mark Chasez, Adam Clarkson, Thomas Conner, Robert Connor, William Cook, Ryan Corona, Melady

Norm Maleng, Prosecuting Attorney
Daniel T. Satterberg, Interim Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

Covell, Malcom Cummings, Cara Curtis, Charles Danberry, Brigid Davis, Chad Davis, Reginald Denson, Steven Ericson, Wayne Fergason, Dale Floyd, Dick Francis, David Franklin, Nick Fuller, Juan Garcia, Dannie Hall, Roy Halladay, Doug Hanna, Kevin Harvuk, Todd Hunt, Luis Hunter, Gordan Jackson, Joshua Jackson, Monik Jackson, Emilie Jones, Karlina Jones, Trina Jones, Josh Kingsten, Dale Kingston, Tom Lehman, Jose Lowie, Gabbrielle Madison, Geno Marconi, James Martin, Kyle Martin, Sam Martson, David Mccary, Alex Miller, Preston Mitchum:

Contrary to RCW 29A.84.130(1), and against the peace and dignity of the State of Washington.

COUNT IX

And I, Daniel T. Satterberg, Interim Prosecuting Attorney aforesaid further do accuse TINA MARIE JOHNSON of the crime of **Providing False Information on a Voter Registration**, a crime of the same or similar character and based on a series of acts connected together with another crime charged herein, which crimes were part of a common scheme or plan, and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendant TINA MARIE JOHNSON, together with others, in King County, Washington, during a period of time intervening between September 1, 2006 through October 8, 2006, did knowingly provide false information on applications for voter registrations under RCW 29A, to-wit: applications under one or more of the following names:

Jason Myers, Gabe Nyberg, Darren Oconner, Tannee Olsen, Pat Oscure, Milt Palacio, Will Peters, Frank Phillips, Leroy Phillips, Noah Preston, Julian Ramerez, Jeniffer Randle, Frank Rich, Lee Richardson, Rodger Richardson, Bryan Riley, Michael Robertson, Tyrone Rock, Brent Royal, Bill Ruley, Adam Scott, Clyde Scott, Jaff Shaman, Siara Simpson, Abe Smith, Damian Smith, Daunte Smith, Edgar Smith, Jackson Smith, Jerome Smith, Claire Peterson, Jonathan Smith, Lucas Smith, Magan Smith, Regina Smith, Roger Smith, Trinity Smith, Julie Snider, James Snyder, Kevin Spence, Abagail Spencer, Leon Spinks, Jasmine Tate, Paul Tate, Jim Tates, Chris Taylor, Milton Taylor, Shelly Thomas, Jason Tylorson, Dewayne White, Kaye White, Becky Williams, Jason Williams, Kina Wilson, Perry Winston, Marcella Yowell;

Contrary to RCW 29A.84.130(1), and against the peace and dignity of the State of Washington.

COUNT X

And I, Daniel T. Satterberg, Interim Prosecuting Attorney aforesaid further do accuse TINA MARIE JOHNSON of the crime of **Providing False Information on a Voter Registration**, a crime of the same or similar character and based on a series of acts connected together with another crime charged herein, which crimes were part of a common scheme or plan, and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

Norm Maleng, Prosecuting Attorney
Daniel T. Satterberg, Interim Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

1 That the defendant TINA MARIE JOHNSON, together with others, in Pierce County,
Washington, during a period of time intervening between September 1, 2006 through October 8,
2 2006, did knowingly provide false information on applications for voter registrations under RCW
29A, to-wit: applications under one or more of the following names:
3
Connor Hunt, James Riley, Cheyenne Stocton, William Smith, Anna Smith, Alica Pierce,
4 Kathy Pablo, Divante Olson, Diana Rivers, Bruce Williams, Matthew Wayensbro, Travis Proefrock,
Kevin Doherty, Abel Edwards, Pat Ember, Teddy Edwardson, Jackie Smith, Eric Sofrako, Steve
5 Austin, Glen Davis, Bobby Quin, Kenny Robertson, Gloria Young, Sherry Mayson, Conner Mcrae,
Cody Smith, Dexter Coufal, Alan Johnson, David Anthony, Cynthia Powmen, Jamie Tate, Ricky
6 Wickson, Pion Aritz, Dan Birce, Heather William, Veronica Mars;

7 Contrary to RCW 29A.84.130(1), and against the peace and dignity of the State of
Washington.
8
COUNT XI
9
And I, Daniel T. Satterberg, Interim Prosecuting Attorney aforesaid further do accuse
10 JAYSON LEE WOODS of the crime of **Providing False Information on a Voter Registration**, a
crime of the same or similar character and based on a series of acts connected together with another
11 crime charged herein, which crimes were part of a common scheme or plan, and which crimes were
so closely connected in respect to time, place and occasion that it would be difficult to separate proof
12 of one charge from proof of the other, committed as follows:

13 That the defendant JAYSON LEE WOODS, together with others, in King County,
Washington, during a period of time intervening between September 1, 2006 through October 8,
14 2006, did knowingly provide false information on applications for voter registrations under RCW
29A, to-wit: applications under one or more of the following names:
15
Ray Adeleke, Lisa Adkins, Ronnie Agosta, Bruce Akins, Wayne Amuneson, Kim Ancell,
16 Ashley Anderson, Jessica Anderson, Mark Anderson, Randall Ans Den, Airelle Austin, Tony Ayers,
Christy Bancoft, Calvin Bankston, Alice Barber, Mary Barker, Whitney Barker, John Barr, Phyllis
17 Benington, Marshe Bennett, Marleta Benson, Betty Benton, Judy Biggert, Brenda Bisciglia, Norm
Bishop, Marsha Blackburn, Jadamarie Blakemoore, Ginny Brown, Juliana Brown, Allan Burgeson,
18 Dan Burton, Tim Busch, Amber Calvwell, Scott Campbell, Chris Cannon, Omar Carrington, Terry
Carter, Tim Chapell, Josie Charles, Lauren Cheney, Latina Claycamp, Mike Conaway, Mimi Cooper,
19 Mary Cottons, Galvin Covey, Paul Cowell, Antonio Cox, Tre Curry, Cameron Curtis, Paul
Davidson;
20
Contrary to RCW 29A.84.130(1), and against the peace and dignity of the State of
21 Washington.
22
23

Norm Maleng, Prosecuting Attorney
Daniel T. Satterberg, Interim Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

COUNT XII

And I, Daniel T. Satterberg, Interim Prosecuting Attorney aforesaid further do accuse JAYSON LEE WOODS of the crime of **Providing False Information on a Voter Registration**, a crime of the same or similar character and based on a series of acts connected together with another crime charged herein, which crimes were part of a common scheme or plan, and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendant JAYSON LEE WOODS, together with others, in King County, Washington, during a period of time intervening between September 1, 2006 through October 8, 2006, did knowingly provide false information on applications for voter registrations under RCW 29A, to-wit: applications under one or more of the following names:

Dave Davis, Justin Davis, Richard Davison, Frank Demons, Nicholas Denigris, Bonney Dillano, Ryan Dotson, Martain Elliott, Frank Ellis, Lewis Ellsworth, Christian Elmont, Raymond Elms, Joshua Elrod, Mark Emerald, Dudley Emmett, Pauline Enderson, Mary Ericson, Nick Farell, Douglas Fergason, Julie Finch, Betty Fitzgerald, Gale Fletcher, Jay Floberg, Pete Folly, Dennis Forbes, Corliss Fowler, Lawrence Fredriks, Julie Frisco, Jerry Frons, John Frost, Rosalie Gearhead, Jeremy Giles, Nikki Glendoson, Mark Halester, Michael Hall, Gary Hamilton, Vera Harper, Lisa Harrington, Steve Hayden, Brent Hill, Martin Hill, Valery Hill, Lee Hogan, Nicole Hoppensteadt, Alex Hopson, Dexter Horner, Howard Hudson, Lang Hugger, Shawna Hunt, Jack Iverson;

Contrary to RCW 29A.84.130(1), and against the peace and dignity of the State of Washington.

COUNT XIII

And I, Daniel T. Satterberg, Interim Prosecuting Attorney aforesaid further do accuse JAYSON LEE WOODS of the crime of **Providing False Information on a Voter Registration**, a crime of the same or similar character and based on a series of acts connected together with another crime charged herein, which crimes were part of a common scheme or plan, and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendant JAYSON LEE WOODS, together with others, in King County, Washington, during a period of time intervening between September 1, 2006 through October 8, 2006, did knowingly provide false information on applications for voter registrations under RCW 29A, to-wit: applications under one or more of the following names:

Amanda Jackson, Celine Jackson, Fred Jackson, James Jackson, Paul Jackson, Delnique Jacobson, Julie Jacobson, Manuke Jacobson, Nicole James, Carolyn Jasinski, Hugh Jefferson, Greg Jeffres, Ashley Johnson, Cory Johnson, Albert Johnston, Kevin Johnston, Suezanna Johnston,

Norm Maleng, Prosecuting Attorney
Daniel T. Satterberg, Interim Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

Brittney Jones, Gwendoly Jones, Jamie Jones, Mike Jones, Bill Jorgenson, Dick Judeson, Rachel Kablec, Anthony Keith, Johnny Kendo, Jason Kepler, Pete King, Bill Kingson, Mark Kirk, Greg Koba, Shanna Kostad, Sheenia Landen, Larry Larson, Julie Lawrence, Tom Lee, Robert Lewis, Caleb Lockart, Ray Logan, Gary Mack, Billy Magma, Rita Mandels, Karl Manner, Julia Manning, Carlos Mantcia, Dakota Marcus, Eran Marks, Louis Marks, Doug Marrs, Tobey Mars;

Contrary to RCW 29A.84.130(1), and against the peace and dignity of the State of Washington.

COUNT XIV

And I, Daniel T. Satterberg, Interim Prosecuting Attorney aforesaid further do accuse JAYSON LEE WOODS of the crime of **Providing False Information on a Voter Registration**, a crime of the same or similar character and based on a series of acts connected together with another crime charged herein, which crimes were part of a common scheme or plan, and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendant JAYSON LEE WOODS, together with others, in King County, Washington, during a period of time intervening between September 1, 2006 through October 8, 2006, did knowingly provide false information on applications for voter registrations under RCW 29A, to-wit: applications under one or more of the following names:

Del Marshall, Michael Marston, Rochelle Martin, Kirklyn Mason, Steven Masters, June Mcnerney, Martin Meeker, Gunter Meekers, Marty Miller, Ron Miller, Gabriel Mills, Trace Mills, Nate Myers, Jonathan Nelson, Brandon Oaks, Nelson Ockfen, Brian Ohara, Jason Ortiz, Tom Osborne, Katherine Parker, Nate Patten, Kalie Paul, Kendrick Payne, Shannon Penny, Marie Marshall, Johan Petro, May Potter, Donney Price, Nancy Price, Mich Redmen, David Richardson, Alberto Richmen, Simon Ripley, Debbie Roberts, Earl Roberts, Danny Rodregez, Albert Rodriguez, Mark Schafer, Thomas Sites, Marie Skaggs, Odell Skinner, Edward Smith, Gabby Smith, Karen Smith, Robert Smith, Patrick Somers, Jay Spencer, Shannon Spencer, Johnathen Statesmen, Kari Stockton.

Contrary to RCW 29A.84.130(1), and against the peace and dignity of the State of Washington.

COUNT XV

And I, Daniel T. Satterberg, Interim Prosecuting Attorney aforesaid further do accuse JAYSON LEE WOODS of the crime of **Providing False Information on a Voter Registration**, a crime of the same or similar character and based on a series of acts connected together with another crime charged herein, which crimes were part of a common scheme or plan, and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

Norm Maleng, Prosecuting Attorney
Daniel T. Satterberg, Interim Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

1 That the defendant JAYSON LEE WOODS, together with others, in King County,
Washington, during a period of time intervening between September 1, 2006 through October 8,
2 2006, did knowingly provide false information on applications for voter registrations under RCW
29A, to-wit: applications under one or more of the following names:
3
Lonny Stoketon, James Strong, Tom Tancredo, Joe Tate, Bobby Taylor, Martez Thomas,
4 Miles Thompson, Terry Thompson, Wally Thompson, Brian Tolley, Todd Valdez, David Varitek,
Chris Venton, Shawn Vincent, Darrell Wade, Jessica Washington, Bryan White, Connie Whitehead,
5 Chris Wilks, John Willcox, April William, Travis William, Wanda William, Shawn Williams,
Trinaty Williams, Robert Willis, Jimmy Wilson, Trevor Wilson, David Winslow, Taylor Winthrop,
6 Eddie Wood, Arnold Woods, Frank Woods, Randle Woods, Lee Young, Jeff Alexander, Carrol
Benton, Rachael Elsberry, Rick Jowells, Porsha Madison, Amber Anderson, Ron Arnold, Spencer
7 Bachus, Tom Baily, David Baker, Destiny Banner, Rick Barber, Fred Bidwell, Anthony Birkland,
Jennifer Bones.
8
Contrary to RCW 29A.84.130(1), and against the peace and dignity of the State of
9 Washington.

10 COUNT XVI

11 And I, Daniel T. Satterberg, Interim Prosecuting Attorney aforesaid further do accuse
JAYSON LEE WOODS of the crime of **Providing False Information on a Voter Registration**, a
12 crime of the same or similar character and based on a series of acts connected together with another
crime charged herein, which crimes were part of a common scheme or plan, and which crimes were
13 so closely connected in respect to time, place and occasion that it would be difficult to separate proof
of one charge from proof of the other, committed as follows:
14
That the defendant JAYSON LEE WOODS, together with others, in King County,
15 Washington, during a period of time intervening between September 1, 2006 through October 8,
2006, did knowingly provide false information on applications for voter registrations under RCW
16 29A, to-wit: applications under one or more of the following names:

17 Jason Bucks, Chris Burkey, Bill Cannon, Sam Cannon, Christina Carpenter, Terry Carrys,
Berry Carter, Jeffrey Christen, Kym Coffey, Randell Cove, Robert Cox, Jodie Dexter, Sunny Donald,
18 David Edward, Randy Ericson, Suzanne Fisher, Margeret Fison, Mitchell Ford, Danny Fortson,
Janett Fraggs, Carlos Franks, James Gorden, Zachary Green, Dennis Hamler, Janine Haroldson,
19 Jamie Hawley, Keyyonna Hodges, Katie Holmes, Casey Holson, Dean Hover, Joe Hunter, Dakota
Jackson, Billy James, Kevin Johnson, Kimberley Johnson, Matt Johnson, Rick Johnson, Harrey
20 Jone, Brian Kadish, Hassan Kahn, Brandy Kane, Al Knutson, Shana Larson, Chang Lee, Davonnta
Lewis, Paul Lincoln, Max Louies, Jan Madison, Tyrese Manel, Stephen Marris;
21
Contrary to RCW 29A.84.130(1), and against the peace and dignity of the State of
22 Washington.
23

Norm Maleng, Prosecuting Attorney
Daniel T. Satterberg, Interim Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

COUNT XVII

And I, Daniel T. Satterberg, Interim Prosecuting Attorney aforesaid further do accuse JAYSON LEE WOODS of the crime of **Providing False Information on a Voter Registration**, a crime of the same or similar character and based on a series of acts connected together with another crime charged herein, which crimes were part of a common scheme or plan, and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendant JAYSON LEE WOODS, together with others, in King County, Washington, during a period of time intervening between September 1, 2006 through October 8, 2006, did knowingly provide false information on applications for voter registrations under RCW 29A, to-wit: applications under one or more of the following names:

Breanne Martine, Angie Martinez, Jordan Martinez, Kathleen Martini, David Matthews, Andrew Mays, Blue Mcrae, Hunter Micheals, Frank Mickels, Joyce Miller, Jack Monrowe, Jean Morgan, Shelten Morris, Phillup Munic, Cliff Nelson, Jack Newin, Bill Olson, Jonathan Parker, Judie Peters, Jamie Phillips, Karl Porter, Marreo Pulson, Leo Randalf, Linda Randich, Kenneth Riley, Jack Ringo, Tyler Robertson, Hal Rogers, Luke Ruiston, Joann Smith, Tina Smith, Damone Stevens, Sunny Stone, Ben Thompson, Carl Turner, Joseph Turner, Bobby Valentine, David Varitek, Jean Villamor, Luke Wattson, Clarence White, Steve White, Montey Williams, Brent Willson, Aaron Wilson;

Contrary to RCW 29A.84.130(1), and against the peace and dignity of the State of Washington.

COUNT XVIII

And I, Daniel T. Satterberg, Interim Prosecuting Attorney aforesaid further do accuse JAYSON LEE WOODS of the crime of **Providing False Information on a Voter Registration**, a crime of the same or similar character and based on a series of acts connected together with another crime charged herein, which crimes were part of a common scheme or plan, and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendant JAYSON LEE WOODS, together with others, in Pierce County, Washington, during a period of time intervening between September 1, 2006 through October 8, 2006, did knowingly provide false information on applications for voter registrations under RCW 29A, to-wit: applications under one or more of the following names:

John York, Todd Garmen, Grace Happerman, Jeff Morrison, Jason Cossel, Joseph Koehn, Gabby Jacobson, Louis Formen, Kirk Metally, Joseph Murry, Michael Richardson, John McPhail, Brad Costa, Fred Cornwell, Ravin Betts, Barry Bexters, Keith Gumble, Mark Mead, David Pete;

Norm Maleng, Prosecuting Attorney
Daniel T. Satterberg, Interim Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

Contrary to RCW 29A.84.130(1), and against the peace and dignity of the State of Washington.

COUNT XIX

And I, Daniel T. Satterberg, Interim Prosecuting Attorney aforesaid further do accuse RYAN EDWARD OLSON of the crime of **Providing False Information on a Voter Registration**, a crime of the same or similar character and based on a series of acts connected together with another crime charged herein, which crimes were part of a common scheme or plan, and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendant RYAN EDWARD OLSON, together with others, in King County, Washington, during a period of time intervening between September 1, 2006 through October 8, 2006, did knowingly provide false information on applications for voter registrations under RCW 29A, to-wit: applications under one or more of the following names:

Derik Lee, Curtis Martin, Ken Martin, Tim Meish, Shawn Mellon, Buddy Miller, Ted Mitchell, Carla Moilter, Karl Moss, Jake Mower, Sid Andrews, Donald Ashleman, Vin Baker, Levin Baron, Chad Brady, Wess Burkman, Larry Bush, Bobby Carter, James Carter, Joe Carter, Billy Cartman, Gean Cartman, Steve Chase, Brett Cummings, Tom Cushman, Frank Eldon, Glenn Eldon, Carl Fitch, Rick Flare, Bruce Foster, Billy Gram, Trent Green, Billy Hanson, Gary Harland, Bill Hartwood, Billy Hays, Paul Henderson, Mark Henry, Edson Holloway, Phil Jackson, Sean John, John Kacey, Angle Keller, Gene Kelley, Mark Krober, Walter Newton, Shawn Pace, Richard Palms, Rod Parks, Brian Patterson;

Contrary to RCW 29A.84.130(1), and against the peace and dignity of the State of Washington.

COUNT XX

And I, Daniel T. Satterberg, Interim Prosecuting Attorney aforesaid further do accuse RYAN EDWARD OLSON of the crime of **Providing False Information on a Voter Registration**, a crime of the same or similar character and based on a series of acts connected together with another crime charged herein, which crimes were part of a common scheme or plan, and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendant RYAN EDWARD OLSON, together with others, in King County, Washington, during a period of time intervening between September 1, 2006 through October 8, 2006, did knowingly provide false information on applications for voter registrations under RCW 29A, to-wit: applications under one or more of the following names:

Norm Maleng, Prosecuting Attorney
Daniel T. Satterberg, Interim Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

Luck Pearsen, Mike Peary, Charles Piny, Larry Porter, Stuart Prestwood, Daron Pruwitt, Stephan Purdy, Steve Rathburn, Dylan Renner. Bill Rhone, Carmen Riley, Trent Rogers, John Rothery, Bill Sager, Jose Santana, Wayne Scott, Danny Stokes, Karl Tarrant, Bruce Thomsen, Patt Thurston, Billy Turner, Conrade Venis, Kurt Warmner, Cory Welts, Carey Wilson, Cory Wilson, Owen Wilson, Curt Windmill, Joan Hean, Craig Anderson, Jennifer Ann, Ron Artest, Roger Bergb, Jaimie Cruz, Everett Fay, Stephen Glass, Glenn Harper, Leigh Harper, Raymond Krisor, Allan Penson, Guy Richards, Kevin Washington, Cory Wilkins.

Contrary to RCW 29A.84.130(1), and against the peace and dignity of the State of Washington.

COUNT XXI

And I, Daniel T. Satterberg, Interim Prosecuting Attorney aforesaid further do accuse ROBERT EDWARD GREENE of the crime of **Providing False Information on a Voter Registration**, a crime of the same or similar character and based on a series of acts connected together with another crime charged herein, which crimes were part of a common scheme or plan, and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendant ROBERT EDWARD GREENE, together with others, in King County, Washington, during a period of time intervening between September 1, 2006 through October 8, 2006, did knowingly provide false information on applications for voter registrations under RCW 29A, to-wit: applications under one or more of the following names:

Brad Berry, Miacheal Blackwell, Edward Bradley, Clancy Devery, Norman Devore, Peter Fowler, Caroline Fox, James Garmey, Willie Green, Ari Hollander, Erin Hope, Becky Johns, Mike Jones, Bruce Larkson, Eric Lee, Amy Lundin, Terry Mathew, Peter Mccall, Douglas Mcdougald, Rodney Morgan, Anthony Perkins, Donnald Portman, George Reed, Rich Rees, Maple Rock, Carl Simmons, James Smith, Corey Stosich, Baron Taylor, Byron Stout, Gary Venohr, Richard Williams, Melvin Wright, Flores Estrada, James Binks, Edward Hanson, Marc Herold, Bryan Hopkins, Jullie King, Joel Lipson, Allan Myers, Jeff Olson, Gentry Stretz, George Taylor.

Contrary to RCW 29A.84.130(1), and against the peace and dignity of the State of Washington.

COUNT XXII

And I, Daniel T. Satterberg, Interim Prosecuting Attorney aforesaid further do accuse KENDRA LYNN THILL of the crime of **Providing False Information on a Voter Registration**, a crime of the same or similar character and based on a series of acts connected together with another crime charged herein, which crimes were part of a common scheme or plan, and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

Norm Maleng, Prosecuting Attorney
Daniel T. Satterberg, Interim Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

1 That the defendant KENDRA LYNN THILL, together with others, in King County,
Washington, during a period of time intervening between September 1, 2006 through October 8,
2 2006, did knowingly provide false information on applications for voter registrations under RCW
29A, to-wit: applications under one or more of the following names:
3
Tom Bracy, Matt Cliet, Jhon James, Bill Johnson, Joanan Kendall, Jamie Labarge, Jamie
4 Lamet, Darcy Lovly, Patric Shell, Jhon Renolds, Steven Thomas, David Alren, Alice Arnolds, Todd
Barker, Neal Bradby, Brandy Brantly, Fruto Boy Crispila, Kevin Dawson, Cassandra Doyle, Debbie
5 Forseth, Alen Godoy, John Halford, Harold Halker, Mary Hyord, Theresa Jacobs, Jamale Jefferson,
Malcolm Jones, James Larson, Marie Marshall, Peggie Nowlin, Robert Paterson, Jeff Thril, Tim
6 Towers, Jasen Truman, Gary Wentland, Bruce Williams;

7 Contrary to RCW 29A.84.130(1), and against the peace and dignity of the State of
Washington.
8
COUNT XXIII
9
And I, Daniel T. Satterberg, Interim Prosecuting Attorney aforesaid further do accuse
10 BRIANNA ROSE DEBWA of the crime of **Providing False Information on a Voter Registration**,
a crime of the same or similar character and based on a series of acts connected together with another
11 crime charged herein, which crimes were part of a common scheme or plan, and which crimes were
so closely connected in respect to time, place and occasion that it would be difficult to separate proof
12 of one charge from proof of the other, committed as follows:

13 That the defendant BRIANNA ROSE DEBWA, together with others, in King County,
Washington, during a period of time intervening between September 1, 2006 through October 8,
14 2006, did knowingly provide false information on applications for voter registrations under RCW
29A, to-wit: applications under one or more of the following names:
15
Ruby Ainsworth, Anthony Bland, Robert Bryant, Chuck Buhr, Chris Cater, Marc Condo,
16 Kim Davis, Justin Fields, Thomas Friedman, David Gill, Michael Graham, Tim Guderian, Dennis
Hastert, Alcee Hastings, Les Herring, Roscoe Howard, Paul Jacobs, William Jones, Steven Karr,
17 John Lewis, Paul Lewis, Timothy Magladry, John McKay, Julie Middleton, Mike Miller, Timothy
Paris, Donald Payne, Terry Porter, Peter Poset, Jack Potter, Rodney Qualley, Doris Rice, Carl
18 Roberts, Ray Samuels, Ralph Scott, Wendell Simmons, Jon Smarts, Desiree Taylor, Anthony
Thompson, Loviss Todd, Joseph Vetter, Jobnny Warner, Diane Watson, Steven Wieberg, Kathy
19 Wilson, Frank Wodsey, Roger Bean, Reginald Carter, Grelan Fortune, Rilex Greek;

20 Tony Gutmen, John Henrikson, Kendall Johnson, Christopher Lawler, Frekkie Magoal,
Kelvin Mitchum, Robert Narron, Ronald Plumm, Mike Smith, Brenda White, Dewayne White, Lee
21 Williams, Luke Williams, Nancy Wright;

22 Luke Abbate, Cole Adams, Frank Adams, Kelly Adams, Derick Adkins, Eddie Anderson,
Sherly Anderson, Darnold Armstrong, Austin Bakersfield, Victor Bakersfeild, Christian Balcer,
23 Marika Baldwin, Jim Barley, Jim Bennet, Branndon Black, Harold Blake, Andrew Bosch, Felix

Norm Maleng, Prosecuting Attorney
Daniel T. Satterberg, Interim Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

Bosch, Jim Bosch, Jetta Bradley, Carlos Brown, Davotta Brown, Dillian Brown, Jeffrey Brown, Jenny Brown, Michael Brown, Paris Brown, Paul Brown, David Bucky, Bobby Burklow, Alan Burns, Scott Burns, Beverly Carolson, Billy Carrsons, Bob Carter, John Carter, Alica Chang, Martha Grant, Isaiah Conley, Billy Conlly, Stephan Conly, Joe Conner, Zachary Conner, JenniferCooper, Alex Cox, Bobby Cox, Harry Cox, Derek Cruz, Westly Cummings, Kevin Daniels;

Avery Davis, Eddie Davis, Daniel Davis, Karen Davis, Tom Davis, Nathan Deal, Arthur Earnest, Craig Edwards, Jeniffer Edwards, Georg Ericson, David Farley, Alan Farrel, Wesley Feeney, Lance Feller, Milton Ferguson, Cameron Fisher, Benny Floyd, Bradley Floyd, Jack Forester, Jacob Foster, Thomas Garcia, Thomas Gardiner, Rodney Freling, Leo Gavin, Michael Gelbale, Collin Giles, James Giles, Jeff Gove, Jeff Hamilin, Jill Hanson, Casey Harvey, Sherman Haynes, Blake Henderson, Marty Henderson, Grace Hill, Stanly Hill, Martin Hilton, Damon Holland, Nick Hoover, Gary Houser, Luke Howards, Cheryl Hudson, Jeremy Hunter, Krystal Jackson, Mason Jackson, Heather James, Walter James, Sean Jefferson, Caleb Johnson, Desire Johnson;

Mike Johnson, Barry Jones, Bella Jones, Carolyn Jones, Daniel Jones, Hiedi Jones, Robert Jones, Howard King, Alex Kingston, Doris Kingston, James Kobata, Jamie Koeber, Vicky Koester, Henry Kopets, Blake Larson, Michell Laton, Latisha Lawrence, Conner Lonny, Kris Markus, Kris Marllow, Kyle Martin, Andrew Martz, Jamie Mcfee, Curtis Mcnerney, James Mcnerney, Ryan Mcnight, Tamra Melvin, Joseph Michaels, Dylan Miles, Anthony Miller, Billy Miller, Eric Miller, Jessica Miller, John Miller, Wayne Mitchell, Eric Nelson, Jake Nelson, Isaac Norten, George Obryan, Brandy Oconner, Carrie Olsen, Logan Olson, Jamie Oriley, Wayne Oriley, Patrick Ownes, James Parker, Leslie Parsons, Stephen Parta, Keith Pashko, Marvin Patrick;

Patricia Patton, Marty Peterson, Joan Petterson, Matthew Philips, Danny Ramsey, Jessie Randell, Michael Redman, Harry Reid, Reggie Reynolds, Ashly Richards, William Richards, Ethan Richardson, Brandon Riley, Phill Riley, Sherry Riley, Mariano Rivera, Justin Roberts, Mary Roberts, Aidan Robertson, Cody Robinson, Seth Robinson, Kelly Romero, Connor Rosenburg, Kareen Rush, Angel Sanders, Dale Schaefer, Dana Scholte, Lacey Shama, Tucker Shaw, Damone Simmons, Andrew Smith, Betty Smith, Crystal Smith, Deann Smith, Evan Smith, Gabriel Smith, Hunter Smith, Ian Smith, Jeremy Smith, Matthew Smith, Melinda Smith, Noah Smith, Tanya Smith, Trinity Smith, Quntine Smithson, Cindy Sofranko, Gerry Sopak, Leon Spencer, Jordan Stevens, Kevin Stevens;

David Stoketon, Sherry Stone, Steve Stone, Jon Swarts, Ryan Swartzer, Damon Tate, Dillion Tate, James Bradly, Jason Tate, Shavon Tate, Mark Techwood, Dale Thompson, Berry Valdez, Robert Wagner, Candace Walker, Bernie Warren, Drako Washington, Tyler Washington, Angel Waters, Luke Waters, Star Waters, Connie West, Christopher White, Ivan White, Bethany Williams, Conrad Williams, John Williams, Jenny Wilson, Lemay Wilson, Seymour Wilson, Tony Wilson, Brandon Winslow, James Woods, Thearsa Woods, Kathy Yiely, Kareena Zamira, Janet Zatkovich, Carl Blaine, Mickael Gelbale, Matt Johnson, Elijah Abernathy, Jose Ainsworth, Kenny Allen, Edward Baig, John Baker, Steve Bich, Harvey Birchfield, James Blake, Daniel Blechele, Wendy Brandley;

Norm Maleng, Prosecuting Attorney
Daniel T. Satterberg, Interim Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

Abby Brown, Anathony Brown, Dan Brown, Nathan Campell, Pete Carol, Jodie Carter, Mark Chasez, Adam Clarkson, Thomas Conner, Robert Connor, William Cook, Ryan Corona, Melady Covell, Malcom Cummings, Cara Curtis, Charles Danberry, Brigid Davis, Chad Davis, Reginald Denson, Steven Ericson, Wayne Fergason, Dale Floyd, Dick Francis, David Franklin, Nick Fuller, Juan Garcia, Dannie Hall, Roy Halladay, Doug Hanna, Kevin Harvuk, Todd Hunt, Luis Hunter, Gordan Jackson, Joshua Jackson, Monik Jackson, Emilie Jones, Karlina Jones, Trina Jones, Josh Kingsten, Dale Kingston, Tom Lehman, Jose Lowie, Gabbrielle Madison, Geno Marconi, James Martin, Kyle Martin, Sam Martson, David Mccary, Alex Miller, Preston Mitchum;

Jason Myers, Gabe Nyberg, Darren Oconner, Tannee Olsen, Pat Oscure, Milt Palacio, Will Peters, Frank Phillips, Leroy Phillips, Noah Preston, Julian Ramerez, Jeniffer Randle, Frank Rich, Lee Richardson, Rodger Richardson, Bryan Riley, Michael Robertson, Tyrone Rock, Brent Royal, Bill Ruley, Adam Scott, Clyde Scott, Jaff Shaman, Siara Simpson, Abe Smith, Damian Smith, Daunte Smith, Edgar Smith, Jackson Smith, Jerome Smith, Claire Peterson, Jonathan Smith, Lucas Smith, Magan Smith, Regina Smith, Roger Smith, Trinity Smith, Julie Snider, James Snyder, Kevin Spence, Abagail Spencer, Leon Spinks, Jasmine Tate, Paul Tate, Jim Tates, Chris Taylor, Milton Taylor, Shelly Thomas, Jason Tylorson, Dewayne White, Kaye White, Becky Williams, Jason Williams, Kina Wilson, Perry Winston, Marcella Yowell;

Connor Hunt, James Riley, Cheyenne Stocton, William Smith, Anna Smith, Alica Pierce, Kathy Pablo, Divante Olson, Diana Rivers, Bruce Williams, Matthew Wayensbro, Travis Proefrock, Kevin Doherty, Abel Edwards, Pat Ember, Teddy Edwardson, Jackie Smith, Eric Sofrako, Steve Austin, Glen Davis, Bobby Quin, Kenny Robertson, Gloria Young, Sherry Mayson, Conner Mcrae, Cody Smith, Dexter Coufal, Alan Johnson, David Anthony, Cynthia Powmen, Jamie Tate, Ricky Wickson, Pion Aritz, Dan Birce, Heather William, Veronica Mars;

Ray Adeleke, Lisa Adkins, Ronnie Agosta. Bruce Akins, Wayne Amuneson, Kim Ancell, Ashley Anderson, Jessica Anderson, Mark Anderson, Randall Ans Den, Airelle Austin, Tony Ayers, Christy Bancoft, Calvin Bankston, Alice Barber, Mary Barker, Whitney Barker, John Barr, Phyllis Benington, Marshe Bennett, Marleta Benson, Betty Benton, Judy Biggert, Brenda Bisciglia, Norm Bishop, Marsha Blackburn, Jadamarie Blakemoore, Ginny Brown, Juliana Brown, Allan Burgeson, Dan Burton, Tim Busch, Amber Calvwell, Scott Campbell, Chris Cannon, Omar Carrington, Terry Carter, Tim Chapell, Josie Charles, Lauren Cheney, Latina Claycamp, Mike Conaway, Mimi Cooper, Mary Cottons, Galvin Covey, Paul Cowell, Antonio Cox, Tre Curry, Cameron Curtis, Paul Davidson;

Dave Davis, Justin Davis, Richard Davison, Frank Demons, Nicholas Denigris, Bonney Dillano, Ryan Dotson, Martain Elliott, Frank Ellis, Lewis Ellsworth, Christian Elmont, Raymond Elms, Joshua Elrod, Mark Emerald, Dudley Emmett, Pauline Enderson, Mary Erieson, Nick Farell, Douglas Fergason, Julie Finch, Betty Fitzgerald, Gale Fletcher, Jay Floberg, Pete Folly, Dennis Forbes, Corliss Fowler, Lawrence Fredriks, Julie Frisco, Jerry Frons, John Frost, Rosalie Gearhead, Jeremy Giles, Nikki Glendoson, Mark Halester, Michael Hall, Gary Hamilton, Vera Harper, Lisa Harrington, Steve Hayden, Brent Hill, Martin Hill, Valery Hill, Lee Hogan, Nicole Hoppensteadt, Alex Hopson, Dexter Horner, Howard Hudson, Lang Hugger, Shawna Hunt, Jack Iverson;

Norm Maleng, Prosecuting Attorney
Daniel T. Satterberg, Interim Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

Amanda Jackson, Celine Jackson, Fred Jackson, James Jackson, Paul Jackson, Delnique Jacobson, Julie Jacobson, Manuke Jacobson, Nicole James, Carolyn Jasinski, Hugh Jefferson, Greg Jeffres, Ashley Johnson, Cory Johnson, Albert Johnston, Kevin Johnston, Suezanna Johnston, Brittney Jones, Gwendoly Jones, Jamie Jones, Mike Jones, Bill Jorgenson, Dick Judeson, Rachel Kablec, Anthony Keith, Johnny Kendo, Jason Kepler, Pete King, Bill Kingson, Mark Kirk, Greg Koba, Shanna Kostad, Sheenia Landen, Larry Larson, Julie Lawrence, Tom Lee, Robert Lewis, Caleb Lockart, Ray Logan, Gary Mack, Billy Magma, Rita Mandels, Karl Manner, Julia Manning, Carlos Mantcia, Dakota Marcus, Eran Marks, Louis Marks, Doug Marrs, Tobey Mars;

Del Marshall, Michael Marston, Rochelle Martin, Kirklyn Mason, Steven Masters, June Mcnerney, Martin Meeker, Gunter Meekers, Marty Miller, Ron Miller, Gabriel Mills, Trace Mills, Nate Myers, Jonathan Nelson, Brandon Oaks, Nelson Ockfen, Brian Ohara, Jason Ortiz, Tom Osborne, Katherine Parker, Nate Patten, Kalie Paul, Kendrick Payne, Shannon Penny, Marie Marshall, Johan Petro, May Potter, Donney Price, Nancy Price, Mich Redmen, David Richardson, Alberto Richmen, Simon Ripley, Debbie Roberts, Earl Roberts, Danny Rodregez, Albert Rodriguez, Mark Schafer, Thomas Sites, Marie Skaggs, Odell Skinner, Edward Smith, Gabby Smith, Karen Smith, Robert Smith, Patrick Somers, Jay Spencer, Shannon Spencer, Johnathen Statesmen, Kari Stockton;

Lonny Stoketon, James Strong, Tom Tancredo, Joe Tate, Bobby Taylor, Martez Thomas, Miles Thompson, Terry Thompson, Wally Thompson, Brian Tolley, Todd Valdez, David Varitek, Chris Venton, Shawn Vincent, Darrell Wade, Jessica Washington, Bryan White, Connie Whitehead, Chris Wilks, John Willcox, April William, Travis William, Wanda William, Shawn Williams, Trinaty Williams, Robert Willis, Jimmy Wilson, Trevor Wilson, David Winslow, Taylor Winthrop, Eddie Wood, Arnold Woods, Frank Woods, Randle Woods, Lee Young, Jeff Alexander, Carrol Benton, Rachael Elsberry, Rick Jowells, Porsha Madison, Amber Anderson, Ron Arnold, Spencer Bachus, Tom Baily, David Baker, Destiny Banner, Rick Barber, Fred Bidwell, Anthony Birkland, Jennifer Bones;

Jason Bucks, Chris Burkey, Bill Cannon, Sam Cannon, Christina Carpenter, Terry Carrys, Berry Carter, Jeffrey Christen, Kym Coffey, Randell Cove, Robert Cox, Jodie Dexter, Sunny Donald, David Edward, Randy Ericson, Suzanne Fisher, Margeret Fison, Mitchell Ford, Danny Fortson, Janett Fraggs, Carlos Franks, James Gorden, Zachary Green, Dennis Hamler, Janine Haroldson, Jamie Hawley, Keyyonna Hodges, Katie Holmes, Casey Holson, Dean Hover, Joe Hunter, Dakota Jackson, Billy James, Kevin Johnson, Kimberley Johnson, Matt Johnson, Rick Johnson, Harrey Jone, Brian Kadish, Hassan Kahn, Brandy Kane, Al Knutson, Shana Larson, Chang Lee, Davonnta Lewis, Paul Lincoln, Max Louies, Jan Madison, Tyrese Manel, Stephen Marris;

Breanne Martine, Angie Martinez, Jordan Martinez, Kathleen Martini, David Matthews, Andrew Mays, Blue Mcrae, Hunter Micheals, Frank Mickels, Joyce Miller, Jack Monrowe, Jean Morgan, Shelten Morris, Phillup Munic, Cliff Nelson, Jack Newin, Bill Olson, Jonathan Parker, Judie Peters, Jamie Phillips, Karl Porter, Marreo Pulson, Leo Randalf, Linda Randich, Kenneth Riley, Jack Ringo, Tyler Robertson, Hal Rogers, Luke Ruiston, Joann Smith, Tina Smith, Damone Stevens, Sunny Stone, Ben Thompson, Carl Turner, Joseph Turner, Bobby Valentine, David Varitek,

Norm Maleng, Prosecuting Attorney
Daniel T. Satterberg, Interim Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

Jean Villamor, Luke Wattson, Clarence White, Steve White, Montey Williams, Brent Willson, Aaron Wilson;

John York, Todd Garmen, Grace Happerman, Jeff Morrison, Jason Cossel, Joseph Koehn, Gabby Jacobson, Louis Formen, Kirk Metally, Joseph Murry, Michael Richardson, John McPhail, Brad Costa, Fred Cornwell, Ravin Betts, Barry Bexters, Keith Gumble, Mark Mead, David Pete;

Derik Lee, Curtis Martin, Ken Martin, Tim Meish, Shawn Mellon, Buddy Miller, Ted Mitchell, Carla Moilter, Karl Moss, Jake Mower, Sid Andrews, Donald Ashleman, Vin Baker, Levin Baron, Chad Brady, Wess Burkman, Larry Bush, Bobby Carter, James Carter, Joe Carter, Billy Cartman, Gean Cartman, Steve Chase, Brett Cummings, Tom Cushman, Frank Eldon, Glenn Eldon, Carl Fitch, Rick Flare, Bruce Foster, Billy Gram, Trent Green, Billy Hanson, Gary Harland, Bill Hartwood, Billy Hays, Paul Henderson, Mark Henry, Edson Holloway, Phil Jackson, Sean John, John Kacey, Angle Keller, Gene Kelley, Mark Krober, Walter Newton, Shawn Pace, Richard Palms, Rod Parks, Brian Patterson;

Luck Pearsen, Mike Peary, Charles Piny, Larry Porter, Stuart Prestwood, Daron Pruwitt, Stephan Purdy, Steve Rathburn, Dylan Renner. Bill Rhone, Carmen Riley, Trent Rogers, John Rothery, Bill Sager, Jose Santana, Wayne Scott, Danny Stokes, Karl Tarrant, Bruce Thomsen, Patt Thurston, Billy Turner, Conrade Venis, Kurt Warmner, Cory Welts, Carey Wilson, Cory Wilson, Owen Wilson, Curt Windmill, Joan Hean, Craig Anderson, Jennifer Ann, Ron Artest, Roger Bergb, Jaimie Cruz, Everett Fay, Stephen Glass, Glenn Harper, Leigh Harper, Raymond Krisor, Allan Penson, Guy Richards, Kevin Washington, Cory Wilkins;

Brad Berry, Miacheal Blackwell, Edward Bradley, Clancy Devery, Norman Devore, Peter Fowler, Brad Fox, Caroline Fox, James Garmey, Willie Green, Ari Hollander, Erin Hope, Becky Johns, Mike Jones, Bruce Larkson, Eric Lee, Amy Lundin, Terry Mathew, Peter Mccall, Douglas Mcdougald, Rodney Morgan, Anthony Perkins, Donnald Portman, George Reed, Rich Rees, Maple Rock, Carl Simmons, James Smith, Corey Stosich, Baron Taylor, Byron Stout, Gary Venohr, Richard Williams, Melvin Wright, Flores Estrada, James Binks, Edward Hanson, Marc Herold, Bryan Hopkins, Jullie King, Joel Lipson, Allan Myers, Jeff Olson, Gentry Stretz, George Taylor;

Tom Bracy, Matt Cliet, Jhon James, Bill Johnson, Joanan Kendall, Jamie Labarge, Jamie Lamet, Darcy Lovly, Patric Shell, Jhon Renolds, Steven Thomas, David Alren, Alice Arnolds, Todd Barker, Neal Bradby, Brandy Brantly, Fruto Boy Crispila, Kevin Dawson Cassandra Doyle, Debbie Forseth, Alen Godoy, John Halford, Harold Halker, Mary Hyord, Theresa Jacobs, Jamale Jefferson, Malcolm Jones, James Larson, Marie Marshall, Peggie Nowlin, Robert Paterson, Jeff Thril, Tim Towers, Jasen Truman, Gary Wentland, or Bruce Williams;

Contrary to RCW 29A.84.130(1), and against the peace and dignity of the State of Washington.

Norm Maleng, Prosecuting Attorney
Daniel T. Satterberg, Interim Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

COUNT XXIV

And I, Daniel T. Satterberg, Interim Prosecuting Attorney aforesaid further do accuse BRIANNA ROSE DEBWA of the crime of **Making a False Statement to a Public Servant**, a crime of the same or similar character and based on a series of acts connected together with another crime charged herein, which crimes were part of a common scheme or plan, and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendant BRIANNA ROSE DEBWA in King County, Washington, on or about October 6, 2006, did knowingly make a false or materially misleading statement, to-wit: statements contained in an Election Official Verification Sheet dated October 6, 2006, to the Director of the King County Department of Records, Elections and Licensing, or his representatives, and this statement was reasonably likely to be relied upon by said public servant, or his representatives, in the discharge of his duties;

Contrary to RCW 9A.76.175, and against the peace and dignity of the State of Washington.

NORM MALENG
Prosecuting Attorney
DANIEL T. SATTERBERG
Interim Prosecuting Attorney

By: _____
Stephen P. Hobbs, WSBA #18935
Senior Deputy Prosecuting Attorney

Norm Maleng, Prosecuting Attorney
Daniel T. Satterberg, Interim Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

07-C-06048-7 SEA 07-C-06046-1 SEA
07-C-06047-9 SEA 07-C-06050-9 SEA
07-C-06051-7 SEA 07-C-06045-2 SEA
07-C-06049-5 SEA CAUSE NO.

CERTIFICATION FOR DETERMINATION OF PROBABLE CAUSE

That CT Johnson is a(n) Detective with the King County Sheriff's Office and has reviewed the investigation conducted in the King County Sheriff's case number(s) 07-120588;

There is probable cause to believe that Brianna Rose Debwa, Robert Edward Greene, Tina Marie Johnson, Clifton Eugene Mitchell, Ryan Edward Olson, Kendra Lynn Thill and Jayson Lee Woods committed the crime(s) of Providing False Information on a Voter Registration, RCW 29A.84.130(1) (King County): Debwa=1 Count; Greene=1 Count; Johnson=7 Counts; Mitchell=1 County; Olson=2 Counts; Thill=1 Count; Woods=7 Counts
Providing False Information on a Voter Registration, RCW 29A.84.130(1) (Pierce County): Johnson=1 Count; Woods=1 Count
Making a False Statement to a Public Official, RCW 9A.76.175 (King County): Debwa=1 Count.
This belief is predicated on the following facts and circumstances:

I. ACORN

A. Background

ACORN stands for Association of Community Organizations for Reform Now. ACORN is, according to its website (www.acorn.org), a "nation-wide community organization of low- and moderate-income families, working together for social justice and stronger communities." ACORN advocates, among other things, voter participation. One of its stated goals is "to create and sustain increased levels of voter participation by low-income, minority and other disenfranchised communities."

Project Vote, according to its website (www.projectvote.org), is a non-profit voter registration and voting rights organization that focuses on low income and minority citizens nationwide.

In 2004, ACORN and Project Vote entered into a joint operating agreement. In that agreement, ACORN agreed to carry out outreach voter registration services for Project Vote as part of a joint effort to register low- and moderate-income and minority voters and to encourage those voters to participate in the democratic process.

ACORN is an Arkansas corporation based in Louisiana. Project Vote is a non-profit organization with an office in Louisiana. ACORN and Project Vote share the same mailing address in Louisiana.

B. Voter Registration Drives-Office Structure

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

ORIGINAL

Prior to a general election ACORN sets up local offices in regions throughout the United States to conduct local voter registration drives. ACORN hires people to open up a regional office and carry out the drive.

The process of setting up a local office, hiring employees, training of those employees and administration of the local drive is outlined in at least the following manuals: "Project Vote and ACORN Voter Registration Training Manual" and the "Project Vote Voter Registration Quality Control" manual.

The first manual primarily discusses how to set-up and run an office. It goes into detail about such items as recruiting employees, training of the employees, problem solving and budget management. ACORN designates the person setting up the office and carrying out the above-described functions as the Political Organizer, or PO.

The second manual primarily discusses step-by-step quality control procedures for handling of voter registration applications collected by employees during the voter registration drive. It explains how to verify the authenticity of applications collected, and also how to conduct an investigation into suspicious applications to determine if they are fraudulent. It also discusses the various ACORN forms and how to use them. This manual is the primary tool of the person ACORN refers to as the Quality Control Specialist, or QCS.

When a PO is hired, that person sets up an office and hires a QCS and other employees. ACORN describes in its manuals the types of other employees to be hired by the PO: Voter Registration Worker (VRW), Team Leaders (TL) and Election Administration Coordinators (EAC).

The manuals detail the roles of the PO, the QCS, VRWs, TLs and EACs:

Political Organizer (PO)

- Manage a staff of 15-25 part-time employees
- Identify and develop a core team of staff leadership
- Develop and execute a recruitment plan
- Provide daily training in the office and the field
- Develop and execute a voter registration site plan
- Daily management of the quality control system and staff
- Administrative duties including processing and handling voter registration cards, turning in cards to board of election
- Produce a minimum of 1000 voter registrations cards per week
- Reporting goals and production on the program via on-line systems
- Participating in weekly scheduled conference calls
- Managing payroll
- Understand and meet office budget
- Frequent use of Internet, e-mail, and basic office programs including Word and Excel and use voter files

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

- Training and support for ACORN members and staff as needed
- Understanding and follow the voter registration laws in your state, plus understanding legal guidelines that ACORN must follow
- Gather, research and analyze voter information and make goals from the information
- Deal with a wide variety of problems/crisis management
- Working with local head organizer to develop site plans, understand city politics, and develop relationships with groups that may be beneficial to our voter registration program

Also:

"Political Organizers are ultimately responsible for all aspects of quality control in their offices. They are responsible for assuring the all the Protocols are implemented and the Quality Control Steps are rigorously followed."

Quality Control Specialist (QCS)
Although neither manual gives a list of specific QCS duties, one of the manuals offers the following: "Quality Control Specialists perform a two step Evaluation procedure and reports all findings to the Political Organizer and Election Administration Coordinator. They follow the Performance Evaluation Protocol: Visual and Phone Verification. Quality Control Specialists may, under the direction of the Political Organizer, perform additional investigations of an application or Voter Registration Worker. Quality Control Specialists report to the Political Organizer."

Voter Registration Worker (VRW)
The manuals offer, in part, the following: "Voter Registration Workers, Employees and Members Distributing and Collecting VR Cards
Voter Registration Workers have four important components in Quality Control:
1. Making sure the applicant is eligible;
2. making sure the application is complete;
3. collecting applications that meet the goals of the organization; and,
4. accurately reporting the numbers and types of applications they collect."

Team Leader (TL)
The manuals offer, in part, the following: "The Team Leader's components of the Quality Control system include managing the Voter Registration Workers in the Team and reporting any issues of concern to the Political Organizer or EA Coordinator. Team Leaders may be responsible for selecting voter registration sites that will produce the applicant demographic the organization seeks. Team Leaders may also be responsible for verifying that applications are complete and verifying the information on batch sheets is accurate before a Voter Registration Worker gives their applications to the Political Organizer. If an office does not have team leaders this is the Political Organizers responsibility. Team Leaders report to the Political Organizer."

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

Election Administration Coordinator (EAC)

"Election Administration Coordinators monitor the quality control in offices, step in to fill gaps in quality control and monitor the election officials processing of applications submitted by ACORN. At least once a week the EA Coordinator reviews the batch sheets, forms and reports maintained by the office pursuant to the Batch and Forms Protocol. Periodically, but at least once a month, the EA Coordinator meets with election officials to discuss quality issues and submits information requests to election officials related to quality control. As needed to address barriers to voter registration or voting, the Election Administration Coordinator will be responsible for building relationships with election officials and local election stakeholders, understanding state and county election procedures, advocating for low-income and minority voters, ensuring voter registration applicants become registered and providing oversight the quality control program."

It should be noted that one of the first items mentioned in the second manual, the "Project Vote Voter Registration Quality Control," is to monitor local election closing dates to make sure that all voter registration cards collected are transmitted to election officials before the closing date.

II. Washington State Voting and Elections

A. Secretary of State

The Washington Secretary of State's Office is located in Olympia, WA. The current Secretary of State is Sam Reed.

One of the primary functions of the Secretary of State is to serve as the state's chief elections officer. One of the responsibilities of the Secretary of State is supervising state and local elections, and certifying the results of state primaries and general elections.

Federal law requires each state to maintain a centralized voter registration database that contains the name and registration information of every eligible voter in the state. Another responsibility of the Secretary of State is maintaining this database. The voter registration database is referred to as the VRDB.

B. King County

King County Records, Elections and Licensing Services, also referred to as REALS, is located at 500 4th AV, Room 553, in Seattle, King County, WA. REALS conducts elections for all taxing districts in King County, maintains voter registration files, verifies signatures on local initiatives, referendums and petitions, processes absentee ballot requests, produces voter pamphlets for each election and conducts redistricting requirements.

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

C. Pierce County

The Elections Division of the Pierce County Auditor's Office is located at 2401 S 35th ST, Room 200, in Tacoma, Pierce County, WA. This division conducts elections for all taxing districts in Pierce County, maintains voter registration files, verifies signatures on local initiatives, referendums and petitions, processes absentee ballot requests, produces voter pamphlets for each election and conducts redistricting requirements.

III. ACORN-Washington

A. Anita Latch-PO

In 2006 ACORN conducted voter registration drives in cities throughout the United States to get people in its target group registered to vote for the upcoming elections.

In June 2006 ACORN hired Anita K. Latch to open an office in the Puget Sound area of Washington in order to conduct a voter registration drive. She was hired as the Political Organizer (PO).

Latch was sent to training out-of-state. She presumably received the above-described manuals. After her training, Latch returned to Washington and began both recruiting employees and looking for potential office space.

Latch initially used a library in the Tacoma area to screen potential employees and for training of new employees.

B. Brianna Debwa-QCS

On or about July 24, 2006, Latch hired Brianna R. Debwa, an acquaintance, to fill the position of Quality Control Specialist (QCS). A staff person from ACORN's national office came to Washington and trained Debwa.

C. Tacoma Office

In or around August 2006, Latch set up an office at 1322 S Fawcett ST, Suite 14, in Tacoma, WA. From this office Latch continued to screen potential employees and train new employees.

D. Additional Employees and Training

Prior to and after Latch opening the Tacoma ACORN office, new employees were continuously hired. Among those hired were the following individuals:

- Robert Edward Greene (hired on or around September 18, 2006)
- Tina Marie Johnson (hired on or around September 13, 2006)

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

- Clifton Eugene Mitchell (hired on or around August 7, 2006)
- Ryan Edward Olson (hired on or around August 9, 2006)
- Kendra Lynn Thill (hired on or around September 26, 2006)
- Jayson Lee Woods (hired on or around September 15, 2006)

Each of the above employees was hired as a Voter Registration Worker. During this time of hiring, no one appears to have been hired for the other positions described above: Team Leader and Election Administration Coordinator.

Once the employees were hired, they were trained and oriented to their new position. As part of this process, the new employees completed numerous forms. Included in these forms are the following: ACORN forms titled "Quality Control Staff Policy," "ACORN Voter Registration Worker Training Certification" and "Sample ACORN Voter Registration Worker Requirement."

The first form clearly states that it is illegal to forge or alter voter registration applications. It then lists examples of fraudulent activities, and it concludes by saying that violation of the policy will result in termination of employment. It goes further and states that ACORN will cooperate with law enforcement in investigations and prosecution of fraud.

The second form is a certification that the employee was trained on how to fill out a voter registration application, how to ensure that it is filled out completely and accurately, how to determine who is eligible to register to vote and that the employee was trained on applicable laws and regulations that cover voter registration.

The third form is a certification that the information provided by the employee on the employment agreement was accurate; that they understand that only persons who are eligible to register to vote can complete a voter registration application; and, that they must turn in voter registration applications at the end of their shift, and if they do not return to the ACORN office at the end of shift they are no longer an ACORN employee and they are responsible, as an individual, for turning in the voter registration application to the appropriate election official.

These forms are signed by all ACORN employees.

IV. 2006 ACORN Voter Registration Drive

A. Latch Departure

Sometime in or around August 2006, Latch's employment with ACORN ended. Clifton Mitchell became the PC, although there was no official promotion to this position. (Mitchell stated the he was promoted to Team Leader by

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

Stephanie Moore, a national ACORN employee, and also given a raise to $10 per hour. He said that she told him if he got the numbers up, she would pay him $25,000 per year plus benefits. Brian Mellor, ACORN general counsel, stated the Mitchell was elevated to PO. According to Latch, he was promoted to Team Leader). There is no documentation, nor are there any statements, that Mitchell received any additional training after being promoted, whether officially or unofficially, to the position of PO.

Also following the departure of Latch, Ryan Olson, who was hired as a VRW, was promoted to TL. Documentation shows that the promotion was made by Mitchell.

B. Pierce County

The employees of the Tacoma ACORN office got people to register to vote by soliciting persons to complete a voter registration application (Card). Cards were collected and submitted to the Elections Division of the Pierce County Auditor's Office. It appears that the Cards were submitted in a timely manner.

C. King County

Towards the end of the voter registration drive, the above-named Tacoma ACORN office employees (Johnson, Greene, Mitchell, Olson, Thill and Woods) began going to Seattle, King County, WA to gather Cards. Records indicate that they were in King County in or around September 28, 2006 to October 4, 2006.

The Cards collected by the employees were submitted to REALS, in bulk, on October 9, 2006. The state deadline for submission of Cards was October 8, 2006.

V. REALS

A. Submission of Voter Registration Applications

On October 9, 2006, REALS received a box of voter registration applications (Cards) from Tacoma office of ACORN. This was one day past the state deadline on which the Cards were due. The box was received by a parcel delivery service, although it is not clear which service. (Lisa Moore, a REALS employee at the time, recalled that was a service like UPS, but definitely not the United States Postal Service).

The box was opened by a REALS employee (that employee has not been identified in this investigation) and found to contain Cards. On top of the stacks of cards was an ACORN form entitled "Election Official Verification Sheet." The form lists, among many things, the following details: the county to which the

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

Cards were delivered (King is listed), the date submitted (October 6th is listed), a representation of the contents of the box by shift date and amount collected on that date (the date range is from September 28th to October 4th, and the amount collected on each date is listed as 128 Cards), name of person submitting the Cards (Brianna Debwa is listed), the total number of Cards submitted (1157 is listed) and the number of incomplete cards ("50 susp/dup" is listed ["susp" means suspicious and "dup" means duplicate]).

The form served as Debwa's statement to REALS, on behalf of ACORN, of the contents of the box.

B. Debwa's Statements to REALS Employee

After receiving the box of Cards from ACORN, Lisa Moore, a REALS employee at the time, attempted to call Debwa several times regarding the issues surround submission of the Cards past the deadline. Moore documented attempted calls to Debwa on the form submitted by Debwa inside the box containing the Cards. (The original form was later provided to investigators).

Moore began trying to contact Debwa on October 10, 2006, and she finally spoke to Debwa on the phone on October 13, 2006. Moore asked Debwa about the box and Debwa indicated that she put it in the mail on Saturday. Moore said she explained to Debwa that statute requires that the Cards be turned in on a specific date, and that they were turned in past that deadline.

Moore began questioning Debwa about Cards that appeared to have been filled out by the same person. Debwa explained that her staff completed Cards for the person registering to vote. Moore explained that many of the signatures appeared to have been done in the same handwriting, and Debwa said that her staff does not complete the signature for the person registering.

Debwa asked Moore for a few of the initials of the staff person who gathered the Card (the person gathering the Card is required to write their initials on the upper right-hand corner of the Card). When Moore provided some of the initials, Debwa told her that those persons no longer worked there.

Moore asked Debwa if her organization suspected any wrong-doing. Debwa said they would complete an incident report and keep it on file. Moore asked Debwa if she notified the state and other counties if there were any issues so the Cards could be looked at. Debwa hesitated but said she yes.

Moore later documented this conversation.

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

C. Voter Registration Application (Card) Issues

It was determined that the above-mentioned box contained 1805 Cards, although the ACORN form completed by Debwa and submitted with the box indicated that the box contained 1157 Cards.

From the beginning, there were issues surrounding whether the Cards would be accepted and processed by REALS. First, the Cards were submitted after the deadline. Second, initial review of the Cards showed that there were issues surrounding their validity. For example, some Cards were missing statutorily required items like a signature. Also, after examination it appeared that the handwriting on many of the cards was similar.

There were discussions regarding these issues among REALS staff, the King County Prosecuting Attorney's Office (KCPAO) and Secretary of State, and it was decided that the Cards would be added to the voter registration database (VRDB) and monitored.

Also during this time, a lawsuit regarding these issues was filed and subsequently a federal judge decided that these Cards would be processed and added to the VRDB.

D. Card Verification Process in Washington-Background

When a voter registration application form (Card) is completed it can be mailed or delivered in-person to a site that accepts Cards (i.e., REALS office). If the form is mailed, it automatically is sent to the Elections Division of the Secretary of State's office. The Elections Division will then forward the form to the appropriate county. The Elections Division does not maintain records. Instead, the Elections Division administers the database (the VRDB) that is used by the state and all counties in Washington.

In essence, the VRDB is a list of registered voters in the state of Washington. It can be accessed by Elections Division staff and county election staff. Data can be entered, updated, changed and deleted by these staff persons.

When a Card is received, whether by the state or a county, a "duplicate check" is first done. This means a check is done to see if the voter listed on the Card is already registered to vote. This ensures that a duplicate registration is not entered into the VRBD.

New Cards are also received for people that are already registered to vote for a variety of reasons. For example, a person may have moved and is sending in a new Card because of this. If this is the case, a check in the VRDB would let the staff person know that the person is already a registered voter, but that the person has moved and the information needs to be updated

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

in the VRDB. This address change would be done instead of the same person being registered to vote twice, which could lead to the person voting twice. When a Card is entered into the VRDB, the identity of the person registering to vote goes through a verification process. On the Card the person identifies himself in several ways: name, date of birth, address and phone number, Social Security Number (SSN) and/or Operator's License Number (OLN). (If the SSN is entered, only the last four numbers are requested).

The first part of the verification is done with the OLN and SSN. If the OLN was provided, it is verified against a list supplied monthly by Department of Licensing (DOL). If the SSN is provided, the number is verified, via DOL, with the Social Security Administration (SSA). (As a note, SSA is required by federal law to allow states to check, through their DOL, SSNs against the SSA database. The SSA has 24 hours to respond). If both OLN and SSN are provided by the person, only the OLN is used for verification.

The SSN verification process presents a problem. For SSA to verify a SSN there has to be an exact match with the name and date of birth to whom the SSN was issued. So, if Frederick A. Smith, with date of birth 01-01-1901, was issued SSN 111-11-1111, SSA will only verify if the information on the voter registration form is an exact match. If the person enters his name as Fred Smith, the SSN verification will fail and be flagged. Another reason for not getting an exact match is because there are lots of people that have the same name and the same last four digits of their SSN. These things happen often according to Elections Division staff.

When a Card is failed and flagged, the Elections Division is notified, but the county responsible for the Card is tasked with the follow-up investigation. For example, the name, date of birth and OLN on a form may match, but it fails because SSA said the last four of the SSN did not match. The county would then make phone calls and do other research to verify that the person matches the SSN. If this works out, the county staff person passes the person and they are added to the VRDB.

Elections Division notifies the proper county if a Card is accepted, rejected or flagged for identification verification. If the Card is rejected or flagged for identification verification, it is the county's responsibility to do follow-up investigation.

Elections Division staff persons check the voter list monthly for duplicates and deceased persons, and quarterly for convicted felons. Staff persons also check for women who have married and changed their names, but have neglected to change their voter registration information. Further follow-up, if necessary, is done by the counties.

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9500

E. ACORN Cards Submitted to REALS

The Cards submitted to REALS were added to the VRDB. The verification process followed.

The Cards were verified in the manner described above. Once a Card failed, REALS sent a letter to the person named on the Card at the address listed on the Card. The letter requested that the person take steps (listed in the letter) to verify that they registered to vote.

Of the 1805 Cards submitted to REALS by ACORN, 1762 Cards failed the verification process.

REALS staff contacted the KCPAO. The case was then referred to the King County Sheriff's Office (KCSO). The US Attorney's Office and the FBI also became involved.

VI. Investigation

A. Background

On or around March 29, 2007, I opened a case file and began an investigation into the issues discussed above. The KCPAO was involved in the investigation from the beginning, and it also became the record keeper of documents pertinent to this investigation.

REALS provided the KCPAO with all original Cards submitted by ACORN. Further, REALS provided all original correspondence (e.g., verification letter sent by REALS to the addresses of named persons listed on the Cards) involved, and other documentation compiled by the office.

B. ACORN Initiates Investigation

Brian Mellor, general counsel for ACORN, sent a letter to then prosecuting attorney Norm Maleng, stating that after reading contenporary new articles concerning potential problems with the Cards submitted to REALS by ACORN, he conducted an internal review of Cards submitted by employees at the Tacoma ACORN office.

Mellor stated in the letter that after analysis he discovered evidence that three employees collected a substantial number of Cards from two homeless shelters in Seattle. His examination of the Cards submitted by these three workers led him to believe that the signatures were forged. He named the employees he suspected: Tina Johnson, Ryan Olson and Jayson Woods.

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

In support of his allegations, Mellor enclosed copies of the named employees' employment application and other documents with their handwriting, as well as some of the Cards that he suspected were fraudulent.

Mellor stated that he would continue to assist in any investigation.

C. Assistance by US Attorney's Office and FBI

The US Attorney's Office and the FBI assisted this investigation by obtaining information and documentation through a grand jury subpoena and other requests. Also, the FBI Special Agent Dan Bennett assisted by taking part in interviews of suspects.

On June 12, 2007 a grand jury subpoena was issued which instructed Brian Mellor, as counsel on behalf of ACORN, to provide copies of the following documents:

- Standard quality and control operating procedure during the 2006 Election Cycle
- Any and all documents relating to quality and control procedures that ACORN made available to the Tacoma Office during the 2006 Election Cycle
- Any and all documents relating to quality and control training provided by ACORN to ACORN employee Clifton Mitchell during the 2006 Election Cycle
- Any and all documents relating to quality and control training provided by ACORN to ACORN employee Briana Debwa during he 2006 Election Cycle
- One copy of any and all documents that establish relationship between ACORN and Project Vote in the State of Washington during the 2006 Election Cycle
- One copy of any and all documents that set forth the manner in which ACORN was reimbursed by Project Vote for gathering and submitting voter registration cards in the State of Washington during the 2006 Election Cycle

The requested documentation was subsequently received. The manuals referred to above were among the documentation received.

On April 26, 2007, Mellor provided the following documents in response to a request by Special Agent Bennett:

- ACORN 2006 Washington Employee List
- ACORN 2006 Washington Supervisor List
- ACORN 2006 Washington Voter Registration Application List

D. KCPAO Documentation and Efforts

The KCPAO used the documentation supplied by REALS and the documentation and information gathered by the US Attorney's Office and the FBI to compile lists that would aid in the investigation. Additionally, the KCPAO sent mailings to all persons listed on the Cards submitted to REALS by ACORN to further confirm the validity of the submitted Cards.

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

The following lists were compiled:

- Spreadsheet of voter registrations that will be presented for challenge to the King County Canvassing Board
- List that breaks down voter registrations by suspect
- List of voter registrations by suspect initials
- King County Auditor's spreadsheet *(Names and addresses on Cards submitted by ACORN were compared against the Auditor's real property records. Only 5 matches were found.)*
- King County Elections spreadsheet *(Shows returned mail that was sent to names on Cards submitted by ACORN. The mailings were sent by REALS.)*.
- List of Shelters that were used by ACORN workers for purposes of address for fraudulent Cards completed *(Investigation showed that the suspect used various homeless shelter addresses on fraudulent Cards. Shelter addresses were used for 1762 of the fraudulent Cards. There were 659 fraudulent Cards that used other addresses.)*.
- Mailing list for non-shelter KCPAO mailings to names on Cards submitted by ACORN *(Registered letters were sent to non-shelter addresses listed on Cards submitted by ACORN.)*
- Mailing list for shelter KCPAO mailings to names on Cards submitted by ACORN *(Registered letters were sent to shelter addresses listed on Cards submitted by ACORN.)*
- Number of voter registrations submitted by date
- Database of Cards submitted by ACORN broken down by suspect initials

The KCPAO also set up a phone-bank so that persons/households receiving registered letters sent by the KCPAO could call with questions. Numerous calls were received by person receiving the registered letters. The callers often called to inform the KCPAO that the person named on the letter did not live at the address.

E. Shelters in King County

Through investigation it was determined that the ACORN Tacoma office employees used addresses of four shelters in Seattle on a large amount of the fraudulent Cards submitted.

The shelters were contacted and when possible a list of names taken from the Cards submitted by ACORN was provided. The shelter would then compare the names on the ACORN list against its own database of registered shelter users. If the shelter found a name on the ACORN list that matched a name on their database, the shelter employee would put the date of birth from the shelter list on the ACORN list.

KCPAO compared the shelter possible matches against the ACORN list and did not, to date, find any matches.

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

KCPAO also sent registered letters to the shelters in the names of the persons listed on the ACORN-submitted cards using the shelter address. It is anticipated that all of the registered letters will be returned.

F. Pierce County

The Elections Division of the Pierce County Auditor's Office was made aware of the investigation in King County. Pierce County, with the input of the Secretary of State, found a number of fraudulent Cards submitted by two of the suspects identified by the investigation in King County. There were 29 Cards submitted by Tina Johnson that appear to be fraudulent and 20 Cards submitted by Jayson Woods that appear to be fraudulent.

The determination that the Cards were fraudulent was made based on the same criteria discussed above (i.e., not passing VRDB verification, similar handwriting).

G. Identify and Locate Suspects

I used the information described above to identify and locate suspects. In addition to the suspects initially identified by Mellor (Johnson, Olson and Woods), the following persons were also identified as suspects: Clifton Mitchell, Robert Greene and Kendra Thill.

The above persons were identified as suspects because their initials were found on numerous Cards submitted to REALS. I compared their initials against the employee list supplied by ACORN. I then used databases available to me to locate the suspects.

H. Witness Interviews

The following persons were interviswed prior to the suspect interviews: Brian Mellor, Anita Latch and Brianna Debwa.

Mellor discussed ACORN and Project Vote's goals as they pertain to voter registration drives. He discussed the Tacoma office, who was hired and for what position, and their job responsibilities. He then discussed in detail ACORN's quality control procedures. The interview was conducted over the phone. A detailed report of that interview is included in the case file.

Latch discussed how she was hired by ACORN, the training she went through, and then she went into detail about the hiring and training of employees and the location and set-up of the Tacoma office. She discussed briefly her departure from her position at ACORN. The interview was in-person and tape recorded. A transcription of that conversation is included in the case file.

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

Debwa discussed how she was hired and by whom. She detailed her role in the Tacoma office. The interview was in-person. A detailed report of that interview is included in the case file. After the interview Debwa became a suspect.

I. Suspect Interviews

The following suspects were interviewed: Brianna Debwa, Tina Johnson, Robert Greene, Clifton Mitchell, Ryan Olson and Jayson Woods.

Follow-up Debwa Interviews

May 10, 2007

SDPA Hobbs and I met with Brianna Debwa at the US Attorney's office in Tacoma.

Debwa told us the following in response to our questions (as a note, Debwa's answers and explanations jumped around and often changed throughout the interview):

She was hired by Anita Latch to work at ACORN. She and Latch are friends. The first day Debwa went through training and also went into "the field" to register voters. After the first day Debwa was given the position as the Quality Control person (QC).

The Tacoma ACORN office was first in the local library branch.

Debwa was trained by Nianna Miller, who is from Florida. Debwa believes Miller works for Project Vote.

Latch was in charge of the Tacoma ACORN office, but she was soon fired. Debwa claimed she did not know why Latch was fired.

Debwa said that she was hired in the beginning of the ACORN Tacoma office, and she stayed until the office closed. Debwa said that it was her fault that the voter applications were turned into King County Elections late.

Debwa then explained what she did as QC. She said she receives the voter registration applications at the end of the day and then makes calls on 10-20% to verify that the phone number are good and that the person's whose name was on the application really registered to vote.

She said she called the ones that she knew were good, but not the ones that duplicates or that looked suspicious. She claimed she could tell by looking at a card if it was bad. She said she was trained by the WA State Liquor Board to recognize legitimate DL numbers. She said she received this training because she was a bartender at times.

SDPA Hobbs showed Debwa her employment application and other employment-related documents. Debwa confirmed that they were the forms she completed. She told us that every employee had to fill out these forms. She confirmed that no backgrounds were done on employees.

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

Debwa said that she sometimes went into the field to check on the workers. She said that Latch was supposed to be doing this, but she never did. Debwa said she ended up telling Latch what she should be doing. She said she practically ran everything.

Debwa again went over some of the QC training she received. She said she received a training pamphlet that instructed what to do. She said she was instructed to call people and verify the information on the voter registration application. She said a family member could verify for the person who completed the application. Debwa said she told all employees that the only person that should be completing an application is the applicant, not the employee. She said the only reason she could think of for the employee to fill out an application was if the person was quadriplegic, and she said she told the employees this. She said in the event this happened, the employees were instructed to call her.

Debwa said it got so she could recognize employee handwriting. She said she fired at least a few employees because she realized they were completing voter registration applications, meaning they created a fraudulent card.

SDPA Hobbs showed Debwa a copy of a "training certificate," which is signed by employees and shows that they acknowledged receiving training. Debwa confirmed that this was the case.

Debwa said that duplicate "cards" (Debwa refers to voter registration applications as "cards") were a problem and that they appeared often. She explained that duplicate cards were cards which had the same name but a different address.

Debwa said that she entered everything into a database on a computer. She said the computer was supplied by ACORN. She said the computer was sent to ACORN, she thinks to Rhode Island, when the Tacoma office was closed down.

Debwa said that after Latch left she trained some employees, but Clifton Mitchell often did the training. She said that Mitchell took over many other functions after Latch left, including the following: recruiting, finding potential registration sites and monitoring employees in the field.

SDPA Hobbs asked Debwa if she knew who Alex King was. She thought for a moment and then said she had to write him up for suspicious cards. When questioned further, she was not sure if it was King was the person of whom she was thinking.

Debwa said that her ACORN headquarters contact was Stephanie Moore. She said that Moore was the head political organizer (PC) for the Tacoma office, and offices in other regions. She said she became the PC for the Tacoma office after Latch left.

Debwa said that all QC persons, nation-wide, had a weekly conference call to discuss issues that were arising. Some examples Debwa gave were how to deal suspicious cards and how to deal with duplicate cards.

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

Debwa said that the Tacoma office was closed and everything shipped out by October 23, 2006.

Next, Debwa discussed day-to-day operations. She said that she and Latch were the first persons to arrive each day, between 8:30 and 9:00 AM. Workers would show up around noon and work until around 5:00 PM.

Workers could go anywhere they wanted, unless there was a prior planned site to go to. At the end of the day the workers would say where they went. Debwa then corrected and said in the morning before the workers left they would designate a general area.

Workers signed in daily. Debwa was responsible for time sheets.

SDPA Hobbs showed Debwa a copy of a mileage reimbursement form. Debwa confirmed that she completed this type of form when she did something like drive workers to a particular location.

SDPA Hobbs showed Debwa a "batch log sheet." Debwa explained that on this form she documented how many cards she took out of a box. She would then put the cards "out front" and workers would pick up cards to take with them into the field. At first, the workers took 15 cards, but the number was later bumped to 30 cards. ACORN's expectation was 20 cards per day per worker.

Debwa discussed what happened after Latch left. She said she (Debwa) took over half of Latch's duties and Mitchell took over the other half. She said that she stayed with the office work and QC role, and Mitchell did the field work. She said that these designations were made by Stephanie Moore.

Debwa talked about the "worker batch sheet" next. She said each worker had to fill out and sign this form. A supervisor would then review and sign the form. Debwa said she didn't usually sign these forms, but would if there was not a team leader around.

Debwa said one of her roles as QC was the "QC batch sheet." She explained that at the end of the day she would go through the cards returned by the workers and separate them into specific piles. For example, there was a pile for suspicious cards and a pile for good cards. She would tag each pile with a "sticky note." Debwa first said she did not record suspicious cards on the QC batch sheet, but then said she did.

Debwa said that a "performance investigation sheet" was filled out only if a card was fraudulent.

Debwa said she was instructed to make verification calls on a percentage of cards returned by the workers, but she said she would make more calls if time permitted.

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

Debwa said a large number of cards were filled out at homeless shelters, and she was not able to verify these cards. She started to see duplicate cards from the shelters, and finally told the workers not to go to shelters anymore.

SDPA Hobbs showed Debwa a copy of a "termination memo." She explained that sometimes after she fired someone she would let them come back in a week or two if they said they were sorry.

Debwa explained how completed cards were delivered to King and Pierce counties. For King County she mailed them all at the very end (ultimately, they were mailed late to King County). For Pierce County she put the cards in a box and hand-delivered them. It was not clear how often she did this, or if she did it personally or if someone else delivered them. Debwa said for Pierce County she put a "sticky note" specifying piles of good cards and piles of suspicious cards. She could not say if she did the same for King County, but said that she called and spoke to a woman at King County and explained this. She also said she kept notes, which she no longer has.

Debwa said that when the cards were delivered to Pierce County an employee would sign for receipt of the cards. She said she would keep notes on what was said. Again, she didn't have the notes.

Debwa said she had arguments with Pierce County people because they didn't want to accept the duplicate cards. She said ACORN policy instructed that cards could not be thrown away, so she left the cards with Pierce County despite their arguments.

Debwa went over the people who were working in September. She said Mitchell was hired the first part of August and was there until the end. She said she didn't know him before this job. She said Robert Green "robbed" her office, taking $150 work of bus fair tickets. She filed a report with Tacoma PD and Green was fired. Kendra Thill was hired around September. She didn't previously know Thill. Ryan Olson started around the same time as Mitchell and worked until the end. She also said that Olson lived with her for a short time and she still has some of his belongings. She believes he is living with his mom in Seattle. Jayson Woods was hired towards the end, and she was brought in by Tina Johnson after Debwa hired Johnson. Debwa said that Johnson was part of a gang called "hatchet clowns," and it was thought that her and other workers who were part of the gang sold drugs while they were working for ACORN. Debwa did not expand on who the other workers were, or if Johnson did this and if so why she was not fired.

Debwa was asked if she fired any of these people. She said she didn't fire anyone at the end. Instead, they just got laid off because the office was closed down. Later, it was pointed out that she completed termination letters on all of these subjects. The letters were all dated near the last day the office was opened. Debwa implied that she did this in the end to cover herself.

Debwa was asked what led her to believe there was a problem. She went back and forth on this. She finally said that towards the end she was suddenly getting 1000+ cards

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

per day. (This was after ACORN threatened to close down the office for poor performance. Debwa said she communicated this to the workers). Because of the high volume of cards she got behind on the verification process. She said she noticed that the cards turned in by Tina Johnson, Jayson Woods and Ryan Olson appeared as if they were fraudulent. She also noted that all of these cards were coming from Seattle.

Debwa continued to avoid direct questions about when she recognized that there was a problem, what specifically the problem was and who all were responsible. Also, she avoided again the subject of who was terminated and when.

SDPA Hobbs then asked Debwa to identify initials on copies of cards. She said "CM" were Clifton Mitchell's initials; "TJ" were Tina Johnson's initials; "RG" were Robert Green's initials; "JW" were Jayson Wood's initials; and, "KLT" belonged to Kendra Thill.

Debwa was asked if there were no initials on a card what was done. She said the card was pulled out. She was told that there were a large number of cards submitted to King County with no initials. She then said she remembered at the end she noticed a large number without initials.

Debwa then volunteered that Mitchell would collect cards from workers and bring them in at the end of the day. She said she thought people were sharing cards. When asked to explain she said that she thought they were dividing up cards and then putting their initials on them. Debwa would not elaborate, so she was asked if she meant that she believed that cards were filled out somewhere, using a phone book for example, by workers and then divided up later so each worker had completed cards to turn in. She said that is what she thought.

She then said that one day Mitchell came in with a large stack of un-initialed cards. Then, suddenly, they would have initials. She thinks this was done to meet the ACORN quota. Again, Debwa avoided saying that they were fraudulent, although it was clear that is what she was implying.

Debwa was asked again to elaborate. She said, "I think towards the end they were getting names out of the phonebook." She said she started recognizing duplicates, bad driver license numbers and Social Security Numbers (although, it is unknown how she could tell if a Social Security Number was wrong). Debwa was asked if she documented those problems. She said she documented them by dividing the cards into piles, as described above.

Debwa was then asked if at the end she got overwhelmed with the large number of cards, and that, combined with the pressures put on by ACORN, led her to ignore obvious fraudulent activity. She said yes. She also nodded her head when asked if she did a termination notice on the workers at the end to cover herself.

Debwa then said that she sent in the large number of un-initialed cards to King County because she didn't know what to do with them.

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

SDPA Hobbs then showed Debwa the QC batch reports that showed no indication of verification calls being made. Debwa mumbled and said something like her full name was not on those forms. It was obvious that this was one of the things that happened at the end when things were falling apart.

Debwa said that she would be happy to look at the un-initialed cards sent to King County, stating that she would probably be able to recognize the handwriting.

Debwa then said she thought Mitchell filled out a large number of cards getting names from phonebooks, and that he then divided them among the workers.

Debwa mentioned that ACORN flew Mitchell to Michigan at one point to assist with operations there.

She then stated clearly that she believed at the end that employees, coordinated by Mitchell, were using phonebooks to fill out the cards. She said that this occurred mostly the last two weeks, and it was prompted by pressure from ACORN.

Debwa was asked to name the suspects. She gave the following names: Mitchell, Olson, Woods, Johnson and Thill.

Debwa was asked if she communicated explicitly to ACORN that there were problems. She said she told Stephanie Moore that cards were not filled out right. She said that Moore told her to just fill out her paperwork.

June 26, 2007

SDPA Hobbs and I met Brianna Debwa at the US Attorney's Office/Tacoma for an interview. We used a conference room in that office for the interview. Debwa previously agreed to the meeting and showed up on her own.

The following is what Debwa told us in response to our questions:

(As a note, Debwa was very defensive during the entire interview. Also, she was very evasive and it was necessary to ask questions several times in order to get an answer. If there was an answer to a question, if at all, it was an evasive answer.)

Debwa started off by saying that ACORN was not sending enough money to the Tacoma office, and that's why the cards were sent late to King County Elections. She said she did what she had to do.

When it was pointed out that at least 900 cards did not have initials, Debwa said that it was the crew leader's job to ensure that all cards were initialed. She said that Clifton Mitchell and Ryan Olson were crew leaders. Debwa said she didn't notice that the cards didn't have initials.

Debwa was shown an "election official verification sheet" by SDPA Hobbs. The copy he showed her appeared to have been filled out by her. Debwa looked at the form for

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

about a minute and started writing notes on a notepad she brought. I looked and it appeared that she was doing math. She said she didn't understand the numbers on the form that she filled out. She then said, after more notes on her notepad, that they numbers were averages.

Debwa was obviously nervous and uncomfortable at this time. She shifted in her chair continuously and wouldn't look at us.

She then admitted that the numbers should reflect the exact number of cards that come in each day, not averages.

SDPA Hobbs told Debwa that the form was a copy of the one she turned into King County. Debwa then spent several minutes denying this, saying the form was one sent to Pierce County. She again started doing math in her notebook. She again stated that the numbers on each line, which were the same, were an average of the total listed on another line.

Debwa then said she didn't submit 1800 cards to King County. She said all she did was brought a box to King County. She said that Mitchell and Olson put everything in the box.

SDPA Hobbs then asked Debwa why the form said that there 50 suspect applications. She explained that those were suspect because the names and phone numbers didn't match. She then said she didn't know what happened, and she lowered her head and looked at the floor.

SDPA Hobbs told Debwa that all 1800 cards submitted by her to King County were fraudulent. Debwa asked how this could be is she called people and they said they were that person.

I told Debwa that was because she didn't call the people. She then said that she was dumped on and at the end she had to close the office, pack everything and no one was doing their jobs so she had to do it.

Debwa admitted that she became suspicious that fraudulent cards were being brought in when she started writing things up at the end. This is why she wrote-up everyone at the end with termination notices.

Debwa was told that she did the termination notices on the last day the office was open, and the employees weren't working anymore anyway. I told her that no one knew they were fired. Debwa then said it wasn't her job to fire people. She then said she couldn't fire people if they all disappeared.

Debwa was asked why she turned in cards that she knew were fraudulent. She said she told King and Pierce County Election employees that she wouldn't destroy any cards, that it wasn't her job to destroy them. She said she submitted the cards anyway.

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

Debwa was shown that above-mentioned form again by SDPA Hobbs and asked if she filled it out. She said she may have filled it out.

Debwa then said it was possible she didn't call all of the people on the cards from King County. She repeated several times that she may not have called "anyone." She then said, "No, I guess I didn't."

Debwa said she knew towards the end what was going on, and that she didn't call anyone. She again repeated that over and over that she may not have called anyone.

Debwa then said she accepts responsibility. She said she made a mistake.

Debwa then said she made a lot of calls to people (she was referring to making verification calls) from the office. She said she may have made some from her cell phone.

Debwa then said, "Yes. I did it!" She wouldn't clarify what she was specifically talking about.

Debwa was asked if she told ACORN that the cards coming in from King County were fraudulent. She said she didn't call ACORN because she was afraid of losing her job. She said if ACORN would have showed more consideration to her and her crew things would have been different. She said if that happened they wouldn't have done what they did.

She then said, "I'm gonna be honest and say I didn't call anyone in Seattle. I fucked up."

Debwa said that towards the end ACORN put on so much pressure for numbers that she bumped up the numbers. She said she was aware of what her crew was doing.

Robert Greene

June 1, 2007

SDPA Hobbs and I went to Robert Greene's mother's residence in Tacoma for the arranged meeting with Greene. Greene invited us into the backyard for the interview.

I began by telling Greene that he was not under arrest, and he said he understood this.

Greene told us the following in response to questions:

He said he worked for ACORN. He said the whole crew went to the library in Seattle. He described the new library in downtown. He said they sat in the library and wrote names. He said they didn't get any signatures from real people, that they did it themselves.

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

Greene said that when he went to get his last check Brianna told him she didn't have it. Greene said that Cliff, the field manager, told him he'd been to Brianna's house and seen Greene's check, and he said he'd get it for him. He said that Cliff went to get his check but it wasn't there. Brianna later told Greene that she lost his check. Greene said he went to ACORN and they gave him his check.

Greene said the crew that went to Seattle besides himself was Cliff, two white guys, a white girl and a mixed-race girl. He said that Brianna drove them up and picked them up on at least one occasion.

Greene said it was Cliff's idea to make the fraud cards. Greene said it was easy to sign people up in Tacoma because he'd lived there all his life and new people. He said he went to the hilltop area.

Greene said he went to Seattle only a couple of times.

Greene said he initialed his cards "R." SDPA Hobbs showed him a form with an "R" and Greene confirmed it was his initial.

Greene said that all the cards in Seattle were fraudulent. He did say that he walked up to a church on Madison where they were handing out food and while there he got one or two homeless people to sign cards for him, be he said they were probably fraudulent also.

Greene said when the crew sat in the library they made up names for the cards, or they used phone books and newspapers. He said they then signed the cards themselves. He said the whole crew helped him, and he said he didn't like sitting in the library. He said it was hard work making up all of those cards.

Greene said that Cliff and Brianna told the crew that they needed to get more cards and that they put pressure on them.

I showed Greene pictures of Tina Johnson, Kendra Thill, Ryan Olson, Clifton Mitchell and Brianna Debwa. He positively identified all of them as the people he worked with at ACORN and the people he made up the cards with, with the exception of Debwa. I did not have a picture of Jayson Woods.

Tina Johnson Interviews

May 10, 2007

SDPA Hobbs and I next went to Tina Johnson's residence, located at 1414 S M ST in Tacoma.

We knocked on the door and it was answered by a woman who identified herself as Tina's mom. SDPA Hobbs and I identified ourselves and asked to speak to Tina Johnson.

Johnson met us on the front porch. Her mother was present when we talked to her.

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

SDPA Hobbs went to the car and brought back some paperwork. He showed to Johnson photocopies of voter registration applications with initials she identified as her own. She also identified initials belonging to Jayson Woods.

At the beginning of our conversation Johnson denied any wrong-doing. She said that she wrote down what she saw on a person's ID. She said she actually completed the applications on several occasions, but that the person who was registering to vote would sign the application.

When confronted again, Johnson said, "At most, I maybe made up a few." She said she used a phonebook or the newspaper to get names for the applications she made up.

SDPA Hobbs showed Johnson examples of signatures on the forged forms, and Johnson agreed that she had signed those signatures, even going so far as to point out that the way she writes a "T" is unique.

When asked, Johnson said that Jayson Woods did the same thing, but that she didn't know how many he made up.

When asked whose idea it was, she said that Clifton Mitchell told her and Woods to make up the names for the applications. He told them to look in phonebooks and newspapers, and he told them to make up ID numbers and Social Security Numbers.

Johnson said that Mitchell would often sit in the library and make up voter registration applications. She said he used the library's phone books and newspapers. She said sometimes he just made them up out of his head, and she said she did that sometimes, too. She also saw Woods do this.

Johnson, went confronted further, admitted that she made up most of the applications she submitted.

I showed Johnson DOL pictures of other suspects (minus the names), and she identified the following persons: Debwa, Mitchell and Ryan Olson. She said she thought Olson was making up applications, but did not see him doing it.

Johnson agreed to meet with SDPA Hobbs again at a later date.

May 22, 2007
Johnson provided a detailed tape recorded interview on this date. The interview is a repeat of the above interview, but in more detail. A transcript is attached to the case file.

July 24, 2007
Called Tina Johnson. She told me the following in response to my questions:

Tina Johnson said that some of the card she did in Tacoma, towards the end, were fraudulent, but she did not remember how many. She said Clifton Mitchell told her and

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

Jayson Woods to use the homeless shelter address to make up cards. She said she sometimes sat at home with Woods and made up the cards. She said that this is when the whole things started with making up cards, and she said that Mitchell got her and Woods started by showing them how.

Clifton Mitchell Interviews

June 4, 2007

SDPA Hobbs and I went to Pierce County Jail and interviewed Mitchell in a visiting room. We were separated by a glass partition.

I began by advising Mitchell of his legal rights from a department-issued card. He said that he understood his rights. I asked if he wanted to waive them and talk to us. He said he'd listen to what he had to say.

SDPA Hobbs explained the case.

Mitchell said, "Can I talk to an attorney first, I'm scared?"

However, Mitchell continued on immediately after this, saying the following unprompted by any questioning.

"I've changed my life dramatically. I'm working at Westmart now making cabinets. I've been there one year. I was wrong. I'm gonna accept the consequences, I'm a man. I did something to keep my job. If quality control would have done her job…"

We explained to Mitchell that he would have to decide if he wanted to talk to us, and to call if he wanted to make a statement. I gave him my contact information.

Mitchell was concerned about how much jail time he would do, saying that he had a really bad criminal history. SDPA Hobbs said he didn't know.

We ended the interview.

June 5, 2007

SDPA Hobbs and I interviewed Mitchell at the Pierce County Jail. I advised Mitchell of his legal rights from a department form. He said (and later signed) that he understood his rights, and he said (and later signed) that he wished to waive his rights.

Mitchell then gave a verbal statement, and I wrote down what he said. In summary, he admitted that when he and the other ACORN employees went to Seattle they went to the library and sat as a group and made up voter registration forms. He said they used phone books, newspaper or just made up the information they put onto the forms. He admitted that all the forms that came from Seattle were fraudulent, but he said there may be just a few legitimate ones. He named the people that went with him to Seattle, and also identified them by the photos I showed to him (with the exception of giving a

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

photo ID of Jayson Woods because I did not have a photo of him). He named the following people: Tina Johnson, Jayson Woods, Ryan Olson, Robert Greene and Kendra Thill. He also identified Latch and Debwa from photos, confirming that they are people he worked with/for.

See Mitchell's statement for further details.

After I finished writing the statement, I read it back to Mitchell and he agreed with its contents. A jail guard was summoned and the statement and a pen were passed to Mitchell. He signed the rights form and the statement.

Mitchell was shown a copy of one of the voter registration forms with the initials "CEM." He identified those initials as his. He was asked who completed the forms with no initials and he said he didn't know. He was asked who the initial "R" belongs to. He thought maybe it belonged to Ryan Olson, but he was not sure. He was asked about "RG" and he thought those were Robert Greene's initials.

Ryan Olson Interview

June 28, 2007

Received call back from Ryan Olson. He said he in California, staying at a friend's house. He gave me the following address: 218 Walnut ST; Needle, CA. He would only tell me that his friend's name is Matt.

I received the call on my cell phone, but I was in SDPA Hobbs' office. I told Olson that I would call him right back. I then called him from SDPA Hobbs' phone, and we conducted an interview on speaker phone. SPDA Hobbs was present when I interviewed Olson. Olson told us the following in response to questions:

He was hired by ACORN in June or July 2006. He was in downtown Tacoma at the time and one of the ACORN workers got him the job. Olson said he was interviewed and hired by Anita Latch.

Olson said he was trained by Clifton Mitchell. The training consisted of Mitchell showing him how to get people to register to vote. He said he worked in Pierce County and solicited Cards where he was told to go. He gave some examples: transit centers, welfare offices and malls.

Olson said he worked with Mitchell, Brianna Debwa, Jayson Woods, Tina Johnson, Kendra Thill and Robert Greene. (As a note, Olson didn't always know the last names of these individuals, but when I said the last names he would recall those to be correct). Olson said that he remembered seeing Kendra Thill around, but he never worked directly with her.

When Olson went to King County he went with Mitchell, Greene, Woods and Johnson. He thinks they went to King County three to four times. He said they traveled by bus, but confirmed that Debwa may have driven them there once, and picked them up at least a few times.

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

Olson said he and the other workers were told by Debwa and Mitchell to do whatever is necessary to get cards.

Olson said that he was supposed to be a team leader, but that it never happened. He said he was never given a raise.
Olson said Mitchell trained him how to get cards, and Mitchell planned which areas they would go to get the cards.

Olson said that everything started going downhill. He said they were told that the office may be closed because the workers were not getting enough cards. They were maybe three weeks to a month before closing down the office.

Olson said Debwa said things like get a felon registered to vote, do what you have to do.

Olson said he didn't verify cards at the end of shift. He said that was Debwa's job.

Olson said that they put their initials on the cards at the end of shift, usually when they got back to the office. Sometimes Debwa would tell them not to worry about initialing the cards if there was not enough time left in the shift.

He said sometimes there would be a pile of completed cards with no initials in the office at the end of shift, and Debwa would tell the workers to take some of the cards and put their initials on them.

Olson was asked and confirmed that the initials he used on the cards were "RO."

Olson said the workers were told their daily quota was 10-20 cards.

Olson was asked and then admitted that they all sat in the library together on some occasions and used phonebooks or a baby-name-book to make up names to put on the cards. They would pick a first name on one page and then pick a last name on another page. They would pick an address from a phonebook page, but not associated with any part of a name, and they would do the same with phone numbers. They would make up dates of birth and Social Security Numbers.

Olson said they would often sit at a table in the library together. They would often put the cards they completed into a pile in the middle and pick out cards to initial and sign. Olson said he was often handed cards and told those were his cards for the day.

Olson said they did this because their jobs were in jeopardy. He said he made up some cards, but would not be more specific. He said he forged signatures on some cards, but again would not be more specific.

Olson said he didn't feel comfortable about doing this.

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

He said that Mitchell said don't worry about it, and he also kind of said not to say anything about what they were doing. Mitchell told them no one would figure it out.

Olson said their jobs ended when the time period for registering voters was up. He didn't have any idea he was fired.

Olson said they never registered anyone to vote, they made the cards up. He said they never went to any shelters.

Olson said that they didn't initial the cards while they were at the library. They did it at the end of the shift.

Clifton Mitchell Interview

July 7, 2007

I went to the Pierce County Jail for a follow-up interview with Clifton Mitchell.

We met in a face-to-face interview room. When I stepped into the room I read Mitchell his legal rights from a department form. I asked if he understood his rights and he said, "Yes, yes." When I started reading them he said them from memory as I went. I then asked if he wanted to waive them and talk to me. He said, "Sure."

I asked Mitchell about the homeless shelters. Mitchell said they never went to the shelters in King County. He said they just used the shelter addresses for the cards. He said he got the addresses by asking homeless people. He said sometimes they would tell him the shelter phone numbers.

Mitchell admitted that when he and the others sat in the library they would trade cards after filling them out so someone else could do the signature.

Mitchell then said to arraign him and he'd plead guilty. He said he just wanted to put this behind him. He said he'd testify if we wanted him to.

I asked Mitchell about when they initialed the cards. He said sometimes they would initial them as they went, and sometimes they didn't.

I asked him why there were so many cards with no initials. He said he didn't remember any that weren't initialed. He said it was Debwa's job to make sure cards had initials.

Mitchell then said that if they didn't get a certain amount of cards per day they would be fired. He said he had to call Stephanie [Moore] every night and give her numbers [of cards for the day].

Mitchell said they would work together and throw the cards together and then grab some from the pile and put their initials on them.

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

He said he didn't understand why there would be a lot of cards with no initials because they all wanted credit for cards. He reiterated that if they didn't keep up their numbers they would be fired.

I asked Mitchell about Debwa's knowledge about what was going on. He said she didn't know. Mitchell said he never told Debwa, nor did he tell Moore, what they were doing.

Jayson Woods Interview

July 13, 2007

I traveled to the area around Columbia Maryland, in Howard County, and interviewed Jayson Woods in a rental car in the parking lot outside of his workplace after he finished working.

Woods agreed to a tape recorded interview. A transcript in attached to the case file. The following is a summary.

Woods came out to my car a little before 1600 hours. He got in the passenger seat. I showed him my identification to confirm who I was. I explained that he was not under arrest. I explained that I did not have arrest powers in Maryland. I explained that he could get out of the car at anytime. Woods said he understood all of this. He said he wanted to talk to me.

I asked Woods if I could tape record our conversation. He said it was fine. I then started a tape and taped our conversation.

In summary, Woods said that he worked for ACORN in 2006. He said that he worked with Tina Johnson (his girlfriend/fiancée at the time), Brianna Debwa, Clifton Mitchell, Ryan Olson, Kendra Thill and Robert Greene. He identified these people's photos (which I showed him), but he did not always know their names, and he did not necessarily work with all of them but did recognized them.

Woods explained how he was hired and trained.

Woods said that in Pierce County Mitchell took him to a homeless shelter and told him that they could just make up cards and use the shelter address.

He said this was carried on into King County, where they used several shelter addresses. Woods said that they used the shelter addresses so much that they memorized them. He said they never went to any of the shelters.

Woods then admitted that in King County they made up all of the cards. He said he was particularly fast at completing cards, explaining why he has such a large number of cards attributed to him.

He said he would often sit at home, smoke marijuana, and fill out cards.

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

We talked about how we could account for the large number of cards turned in to King County with no initials. He said that Mitchell was doing around 200-300 cards per day, but he wouldn't put his initials on most of them. He said he didn't initial all of the cards he did because he didn't want to get caught. (Jayson implied that Mitchell knew that if he turned in such a large amount with his initials it would be obvious the cards were fraudulent). Jayson said that Mitchell turned in the large amounts of un-initialed cards. He said that the cards were checked in nightly, but Mitchell would often check them in.

Woods said they went to the library and used phonebooks to come up with names, phone numbers and addresses. They would make up dates of birth and Social Security numbers. He said they would often trade cards to put on the signatures. He said they would initial the cards at the library or on the way home from Seattle.

Woods said that they were told that they were going to lose their jobs if they didn't get their numbers up. They were told that they could work extra hours, and get paid overtime, to get the number of cards up.

J. Kendra Thill

Kendra Thill has not been located to date. It is believed that she is transient in the Tacoma/Pierce County area. Although she has not been interviewed, there is a large amount of evidence against her. First, Thill's full name is Kendra Lynn Thill. This name was recorded on documents she completed when she was hired by ACORN. She also provided ACORN with a copy of her driver license and SSN card. Thill's initials, KLT, appear on numerous Cards that were determined to be fraudulent. Those Cards were determined to be fraudulent in several ways. First, the Cards bearing Thill's initials did not pass the VRDB verification process. Second, the handwriting on Cards bearing her initials appear to have been made by the same person, and that handwriting appears to be the same handwriting as that found on employment documents completed by Thill. Third, other suspects named Thill as an ACORN employee that participated in the above-described fraudulent activity. Suspects also identified Thill from the driver license photo shown to them.

K. Additional Items

During the course of my investigation I obtained photos of suspects when available. I obtained the photos from DOL. When I interviewed suspects I showed them DOL photos of other suspects, without names, and asked those suspects to identify the person pictured. In all cases the other suspects either recognized the person as a co-worker who participated in fraudulent activity, or they were able to both recognize and name the person (at a minimum the person's first name).

The KCPAO is in the process of challenging 1762 of the 1805 Cards submitted to REALS by ACORN. This means that an attempt is being made to remove the

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

1762 Cards from the VRDB. The challenge is being made because the above-detailed investigation has shown that the Cards are fraudulent and therefore should not be on the VRDB. The cost to REALS for their efforts to date, and on-going, is large and has resulted from Tacoma ACORN office employees.

The Elections Division of the Pierce County Auditor's Office may conduct further investigation into Cards submitted to its office by ACORN, above and beyond the Cards already mentioned above.

VII. Summary

Investigation has shown that the above named Tacoma ACORN office employees engaged in fraudulent activities in both Pierce and King Counties in violation of RCW 29A.84.130(1): Providing False Information on a Voter Registration.

That fraudulent activity is evidenced by the fact that the Cards submitted to King County and to Pierce County did not pass the VRDB verification process described above. Further, a portion of the fraudulent Cards bear the initials of the ACORN employee who gathered the Card. Those initials have been matched to specific employees, and those employees (with the exception of Thill, who has not been located) have admitted to their crimes. Moreover, the similarity of handwriting on Cards bearing the same initials appears to be the same.

In the case of Johnson and Woods, they admitted that in addition to making fraudulent Cards in King County, they also admitted to making fraudulent Cards in Pierce County.

As it pertains to Debwa, evidence has shown that she was aware of the fraudulent activity by other ACORN employees. Debwa received fraudulent Cards from other employees on a daily basis and was responsible for quality control. This entailed verification of the information on the Cards, which was done by several means, including calling the phone numbers listed on the Cards. Documentation completed by Debwa during the timeframe that the fraudulent Cards were completed shows that she did not make any phone calls for the Cards submitted. She admitted that she did not make the calls and that she knew that the Cards were fraudulent. These actions show Debwa's complicity in the actions of the above suspects, which is in violation of RCW 29A.84.130(1).

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

Debwa also identified the document she submitted with the box of Cards to REALS as a documented that she completed. She admitted that the information on the form was not accurate. This form constituted a statement to a public official, which is in violation of RCW 9A.76.175: Making a False Statement to a Public Official.

Under penalty of perjury under the laws of the State of Washington, I certify that the foregoing is true and correct. Signed and dated By me this 25th day of July, 2007, at Seattle, King County, Washington.

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

CAUSE NO. 07-C-06048-7 SEA
CAUSE NO. 07-C-06047-9 SEA
CAUSE NO. 07-C-06051-7 SEA
CAUSE NO. 07-C-06049-5 SEA
CAUSE NO. 07-C-06046-1 SEA
CAUSE NO. 07-C-06050-9 SEA
CAUSE NO. 07-C-06045-2 SEA

PROSECUTING ATTORNEY CASE SUMMARY AND REQUEST FOR BAIL AND/OR CONDITIONS OF RELEASE

The State incorporates by reference the Certification for Determination of Probable Cause written by Detective Christopher Johnson of the King County Sheriff's Office under incident number 07-120588.

REQUEST FOR BAIL

The State requests bail in the amount of $10,000 for each defendant.

Signed this 25th day of July, 2007.

Stephen P. Hobbs, WSBA #18935

Norm Maleng, Prosecuting Attorney
Daniel T. Satterberg, Interim Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

Ms. MITCHELL. Also, I would like to reference the settlement agreement which was actually entered into between King County and ACORN 1 year ago today in which ACORN settled with the King County Prosecutor's Office to avoid criminal and civil prosecution as an organization and paid a $25,000 settlement. I would also ask that that settlement agreement be entered into the official record of the commission hearing today.

Mr. NADLER. Without objection, again.

[The information referred to follows:]

SETTLEMENT & COMPLIANCE AGREEMENT

This SETTLEMENT & COMPLIANCE AGREEMENT is by and between King County, a municipal corporation organized under the laws of the State of Washington ("King County") and the Association of Community Organizations for Reform Now ("ACORN"). King County and ACORN are sometimes collectively referred to in this agreement as the "parties."

RECITALS

WHEREAS, King County has concluded that it may have valid administrative, civil, and criminal cause of actions against ACORN stemming from ACORN's actions during a voter registration operation in King County during the 2006 election cycle; and

WHEREAS ACORN denies any liability for such conduct; and

WHEREAS, the parties wish to resolve this dispute without litigation and in a manner that protects the interest of the public and ensures the future integrity of the voter registration process, that reimburses King County for out-of-pocket expenses associated with its investigation into this matter, and that allows ACORN to gather voter registrations in a manner consistent with the laws of the State of Washington; and

WHEREAS, the parties have reached an agreement acceptable to themselves;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

SPECIFIC TERMS:

(1) Parties:

a. King County is a municipal corporation organized under the laws of the State of Washington.

b. ACORN is an Arkansas corporation, based in Louisiana.

(2) Scope of the Agreement:

a. This agreement applies to any voter registration operation conducted by ACORN that uses paid canvassers to gather registrations, to any large-scale voter registration operation coordinated by ACORN, or to any voter registration operation for which ACORN is being financially reimbursed at the national level or the funding for which has been coordinated by ACORN at the national level.

b. This agreement does not apply to small volunteer efforts by ACORN members, such as attending a community event or door knocking their

neighbors, nor to registrations collected by ACORN staff as part of their community organizing activities.

c. This agreement is not triggered simply because there has been a local-level financial contribution towards a voter registration operation. To the extent funds are raised in the State of Washington for use by the Washington chapter of ACORN for registration activities, the local Washington chapter will meet with the county to discuss applicable procedures to assure that ACORN will be in compliance with state law.

d. This agreement applies within King County, Washington, unless extended by the provisions of the following paragraph.

e. If this agreement is signed by the Washington Secretary of State, or his lawful designee, prior to July 27, 2007, then the agreement shall apply to any ACORN voter registration operation conducted within the State of Washington. In this event, the term "county" as used in this agreement shall refer to any county in which ACORN is conducting voter registration operations.

(3) Compliance with State law:

a. ACORN agrees to comply with Washington State law, including but not limited to RCW 29A.84.130, at all times during any voter registration operation.

b. ACORN agrees to submit all voter registration forms within one week (seven days) of the voter registration form being completed and received by ACORN, as required by RCW 29A.08.115. If ACORN fails to comply with this requirement, absent a force majoure or impossibility of performance, it agrees to pay a $250 penalty per late registration, up to a maximum of $1,000 per late submission.

c. If ACORN does not submit registrations within a week of the registration being gathered, ACORN agrees to stop gathering applications at the local office until ACORN has sent a national staff person to the local office and retrained the local office on submission procedures.

d. Failure by ACORN to submit a registration within one week of its being completed will not penalize the registration applicant, assuming the registration is not fraudulent.

e. If ACORN submits voter registrations after the deadline for submission of registrations (30 days before any special, primary, or general election), as set forth in RCW 29A.08.140, the registrations will not be processed before the next election and ACORN agrees not to challenge the county or state decision to not add the registration applicants to the election roll for the next election.

(4) Management issues:

a. ACORN agrees that any local voter registration operation will be supervised by a single, salaried individual (a "responsible organizer") who is ultimately responsible for the voter registration operation.

b. ACORN may hire a separate quality control officer or combine those duties into the duties of the responsible organizer's position, at its discretion. The quality control officer shall be specifically responsible for ensuring compliance with ACORN's internal quality control procedures and the terms of this agreement.

c. ACORN agrees that ACORN national management will review on at least a weekly basis all quality control forms completed by its local voter registration operation. ACORN will maintain a list of the individuals responsible for conducting this national level review and will implement a procedure by which the fact of the national-level review can be confirmed.

d. ACORN agrees to take immediate steps to address any failure to comply with ACORN's own internal quality control process or the terms of this agreement.

e. ACORN agrees that ACORN national management will notify the County Prosecutor and County Elections immediately upon a determination that there is a systemic quality control problem, a failure to follow ACORN's own quality control procedures, or a violation of the terms of this agreement.

f. ACORN agrees to immediately notify the County Prosecutor and County Elections if any ACORN employee is fired for submitting a fraudulent or suspicious registration.

(5) Training:

a. All ACORN political organizers and quality control officers shall receive training, consistent with ACORN's national quality control process and including the requirements of this agreement, at the national level.

b. ACORN shall prepare a training video as to proper voter registration procedures to be shown to all canvassers prior to their employment. This video must be delivered by ACORN to the Washington Secretary of State for approval at least 45 days prior to its first use. This video does not and should not preclude appropriate live training of canvassers on an ongoing basis by ACORN staff.

c. ACORN agrees to inform all canvassers about the potential criminal consequences for submitting fraudulent registrations. All canvassers shall sign a written acknowledgment of these potential criminal consequences in the presence of either a political organizer or quality control officer, who shall also sign the document.

(6) Quality control issues:

a. ACORN will maintain a list of canvassers that sets forth the initials the canvasser will place on each registration card that he or she obtains. These initials to be distinguishable from employee to employee.

b. ACORN agrees that on each voter registration the canvasser who obtained the registration will place his or her initials in upper right corner of the registration form.

c. ACORN agrees to create a procedure whereby the quality control officer, responsible organizer or responsible organizer's designee, certifies, under penalty of perjury, that all registrations in a given batch were received from the employee initialing the registration.

d. Submission of a voter registration form without the canvasser initials will incur a $250 penalty per registration form. However, this penalty shall not apply if ACORN' submits registrations without initials in a clearly segregated batch accompanied by a letter setting forth the reason why the registrations lack canvasser initials and the steps ACORN will take to address this deficiency.

e. A registration form lacking an initial will still be processed by the county in accordance with state law.

f. ACORN agrees to encourage all individuals completing a voter registration form to date the form. If no date is given, the canvasser will write the date the registration was obtained in the top right corner of the voter registration form.

(7) Suspect registrations:

a. ACORN will prepare a revised "election official verification sheet" for approval by King County. This sheet, in addition to the existing information, shall allow ACORN to indicate with specificity which registrations have been deemed "suspect" (potentially fraudulent) after ACORN review.

b. ACORN agrees to create a new "suspect registration cover sheet" for suspect registrations that allows ACORN to set forth the basis for designating the registration as "suspect."

c. ACORN agrees to segregate all "suspect" registrations upon their submission to the county and to complete the new suspect registration cover sheet for each suspect registration.

d. The revised "election official verification sheet" and new "suspect registration cover sheet" are to be prepared by ACORN and submitted for review and approval to King County by August 31, 2007. These forms are to be approved by King County prior to ACORN initiating a new voter registration operation.

(6) Quality control issues:

a. ACORN will maintain a list of canvassers that sets forth the initials the canvasser will place on each registration card that he or she obtains. These initials to be distinguishable from employee to employee.

b. ACORN agrees that on each voter registration the canvasser who obtained the registration will place his or her initials in upper right corner of the registration form.

c. ACORN agrees to create a procedure whereby the quality control officer, responsible organizer or responsible organizer's designee, certifies, under penalty of perjury, that all registrations in a given batch were received from the employee initialing the registration.

d. Submission of a voter registration form without the canvasser initials will incur a $250 penalty per registration form. However, this penalty shall not apply if ACORN' submits registrations without initials in a clearly segregated batch accompanied by a letter setting forth the reason why the registrations lack canvasser initials and the steps ACORN will take to address this deficiency.

e. A registration form lacking an initial will still be processed by the county in accordance with state law.

f. ACORN agrees to encourage all individuals completing a voter registration form to date the form. If no date is given, the canvasser will write the date the registration was obtained in the top right corner of the voter registration form.

(7) Suspect registrations:

a. ACORN will prepare a revised "election official verification sheet" for approval by King County. This sheet, in addition to the existing information, shall allow ACORN to indicate with specificity which registrations have been deemed "suspect" (potentially fraudulent) after ACORN review.

b. ACORN agrees to create a new "suspect registration cover sheet" for suspect registrations that allows ACORN to set forth the basis for designating the registration as "suspect."

c. ACORN agrees to segregate all "suspect" registrations upon their submission to the county and to complete the new suspect registration cover sheet for each suspect registration.

d. The revised "election official verification sheet" and new "suspect registration cover sheet" are to be prepared by ACORN and submitted for review and approval to King County by August 31, 2007. These forms are to be approved by King County prior to ACORN initiating a new voter registration operation.

e. When delivering registrations to the county, ACORN shall include two copies of the "election official verification sheet." The county will date stamp both sheets upon receipt and return one copy to ACORN.

f. The procedures described in this section shall be set forth in ACORN's internal training document.

(8) County and state oversight:

a. Prior to commencing any voter registration operation in a given county, ACORN agrees to send to the county prosecuting attorney one copy of its voter registration quality control manual and all associated quality control forms, one copy of any agreements it has with other entities that relate to the basis of payments for the voter registration operation, and the names and contact information for the local ACORN responsible organizer, local quality control representative, and national ACORN contact person.

b. ACORN agrees to allow the county prosecuting attorney or the state attorney general to review all ACORN's quality control documents (that are not protected by the attorney-client privilege or other legal privilege) and any agreements or internal documents relating to the basis of payments for a voter registration operation, in their entirety, at any time after appropriate notice and in the presence of legal counsel for ACORN (or other agreed ACORN representative). This provision applies both to ACORN's national involvement in voter registration operations and ACORN's local voter registration operations in Washington State.

c. ACORN will designate one national contact person as its representative for communications concerning this agreement. At its discretion, the county may notify this individual of any breaches of this agreement. Upon such notice, ACORN will cease operation of its voter registration operation until an ACORN national representative has visited the local operation to review training procedures (this requirement may be waived with the agreement of the county).

(9) ACORN criminal liability:

a. ACORN agrees that submission of registrations that have been fraudulently collected by an ACORN employee and not reviewed pursuant to the quality control procedures, or willfully turning in fraudulent cards, may constitute grounds for criminal prosecution of ACORN as a corporate entity unless such cards have been segregated by ACORN pursuant to the requirements of section 7 of this agreement.

b. ACORN agrees that violation of the terms of this agreement may be used as evidence in the State of Washington in future criminal prosecutions against ACORN employees, ACORN management, or ACORN as a corporate entity.

c. Minor violations or a violation of a specific term of this agreement alone cannot be used as the sole basis of a future criminal prosecution against

ACORN employees, ACORN management or ACORN as a corporate entity.

(10) Penalties:

a. If ACORN violates any term of this agreement, it agrees to pay a penalty according to the following schedule:

i. Violation reported by ACORN within 14 days of commission = no penalty.

ii. Violation reported by ACORN within 30 days of commission = $250 per violation.

iii. Violation reported by ACORN after 30 days of commission or brought to ACORN's attention by the county after 30 days of commission = $1,000 per violation.

b. A specific penalty provision contained within the body of this agreement supersedes the penalties in this section. ACORN may be penalized under this agreement only once per violation.

c. All penalties are to be paid to the county in which the voter registration form triggering the violation was either obtained or submitted.

d. The penalty terms of this agreement do not preclude the county from pursuing a civil or criminal claim against ACORN.

(11) Duration of Agreement:

a. This agreement shall remain in effect until December 31, 2012.

(12) ACORN financial responsibility:

a. ACORN agrees to reimburse King County for costs associated with its investigation into ACORN's 2006 registration operations in the amount of $25,000. This amount to be paid to the King County Department of Records, Elections & Licensing Services by August 10, 2007.

AGREEMENT NOT TO SUE AND DISPUTE RESOLUTION:

1. Upon signing this agreement, King County, agrees that it will not pursue any administrative, civil, or criminal remedies against ACORN stemming from its activity in King County during the 2006 election cycle.

2. Nothing in this agreement shall be construed to limit King County or the State of Washington's right to pursue any future violations of state criminal laws. Likewise, nothing in this agreement shall be construed to limit the right of the United States to pursue future violations of federal criminal laws dealing with fraud or the submission of materially false voter registrations.

3. If there is a dispute regarding this agreement, the parties agree to use their best efforts to resolve it directly and/or through their attorneys. If they are unable to

resolve a dispute, either party may bring an action in King County Superior Court to enforce their respective rights, and the prevailing party shall be entitled to recover its reasonable attorneys' fees and all litigation expenses.

NOTICES:

1. All notices required or permitted hereunder shall be in writing, and shall be: (i) delivered in person or by private messenger or overnight courier service where evidence of delivery is obtained, (ii) sent by certified mail, postage prepaid, with return receipt requested, or (iii) dispatched by facsimile transmission (accompanied with reasonable evidence of receipt of transmission and with a confirmation copy mailed no later than the next business day after transmission), to the parties as follows:

TO KING COUNTY:

SHERRIL HUFF, Director
King County Records, Elections and Licensing
King County Administration Building
500 Fourth Avenue, Room 553
Seattle, WA 98104-2337
Facsimile: (206) 296-0108

With Copy To:

Stephen Hobbs
Senior Deputy Prosecuting Attorneys - Civil Division
W400 King County Courthouse
Seattle, WA 98104-2312
Facsimile: (206) 296-0191

TO ACORN:

Washington ACORN
134 SW 153rd St
Suite D
Burien, WA 98166

Brian Mellor
Senior Counsel for ACORN
196 Adams Street
Dorchester, MA 02122

Steve Bachman
ACORN General Counsel
51420 Hunters Crossing Ct
Granger IN 46530

Legal Department
c/o ACORN
1024 Elysian Fields Ave
New Orleans, LA 70117

With Copy To:

John Wolfe
701 5th Avenue
Suite 6110
Seattle, WA 98104
Facsimile (206) 447-9374

2. Such notice shall be effective (a) if given by facsimile, when dispatched if sent before 5:00 p.m. Pacific Time on a business day or, if not, then the first business day after sent; (b) if given by mail, three days after mailing, and (c) if given by any other means, when actually received at the address indicated above. Any party may change its address or facsimile number for notices by giving notice of such change in the manner provided for giving notices, provided that the new location must be accessible via facsimile and within the United States and accessible to the general public during normal business hours.

GENERAL TERMS:

1. *Interpretive.* This agreement constitutes the entire agreement and understanding among the parties, and replaces and supersedes all prior oral or written agreement and understandings.

2. *Venue and Governing Law.* Venue for all disputes arising under or connected with this agreement shall be in the Superior Court for King County. This agreement shall be governed by and interpreted in accordance with Washington law.

3. *Negotiated Agreement.* The parties hereby acknowledge that this agreement has been reached as a result of arms length negotiations with each party represented by counsel. No presumption shall arise as a result of one party or the other having drafted all or any portion of this Agreement.

4. *Counterparts.* This agreement may be executed by the parties in counterparts, each of which, when executed shall be deemed an original instrument and binding against the party signing thereon.

5. *Severability.* If any section, sentence, clause, or portion of this agreement is declared unlawful or unconstitutional for any reason, the remainder of this agreement shall continue in full force and effect.

6. *Authority.* Each party represents and warrants to the others that the individuals signing below have full power, authority and legal right to execute and deliver this Agreement and thereby to legally bind the party on whose behalf such person signed.

7. *Binding Effect; Assignability.* This agreement shall bind and inure to the benefit of the parties and their respective receivers, trustees, insurers, successors, subrogees, transferees and assigns.

8. *Effective Date.* This agreement shall become effective as of the date it is fully executed below.

KING COUNTY, a Washington municipal corporation

DATE: 24 July 2007

Ron Sims,
King County Executive

DATE: 20 July 2007

Daniel Satterberg,
King County Prosecuting Attorney

Association of Community Organizations for Reform Now

DATE: _____

_____

_____

Pursuant to paragraph 2.d, this agreement becomes effective throughout the State of Washington if it is signed by the Washington Secretary of State, or his lawful designee, by July 27, 2007.

DATE: July 25, 2007

Sam Reed,
Washington Secretary of State

Reviewed and Approved as to Form:

DATE:_____ _____

_____

Ms. MITCHELL. Thank you.

ACORN's efforts to register voters have been scandal-prone elsewhere.

In Saint Louis, Missouri officials found that, in 2006, over 1,000 addresses listed on its registrations didn't exist. Federal authorities indicted eight of ACORN's local workers. One of the eight pleaded guilty last month.

Mr. Chairman, I would like to ask that those court documents be entered into the official record of this Committee hearing.

Mr. NADLER. Without objection, all court documents that you wish entered into the record will be. You don't have to ask each time.

[The information referred to is available in the Appendix.]

Ms. MITCHELL. Thank you, I appreciate that.

ACORN has been implicated in similar voter fraud schemes not only in Washington and Missouri but also in Ohio and 12 other States.

The Wall Street Journal noted, "in Ohio, in 2004, a worker for one affiliate of ACORN was given crack cocaine in exchange for fraudulent registrations that included underaged voters, dead voters, and pillars of the community named Mary Poppins, Dick Tracy and Jive Turkey. During a Congressional hearing in Ohio in the aftermath of the 2004 election, officials from several counties in the State explained ACORN's practice of dumping thousands of registration forms in their lap on the last day when registration had closed, when the registration was closing, even though the forms had been collected months earlier."

And I will note that, in the settlement agreement between King County and ACORN in the State of Washington, the settlement agreement specifically requires ACORN to submit its voter registrations within 7 days after having gotten them, rather than waiting until the very end.

In March of this year, Philadelphia election officials accused ACORN of filing fraudulent voter registrations in advance of the April 22nd Pennsylvania primary. The charges have been forwarded to the city District Attorney's Office.

Mr. Chairman, here is the fact: There are people in America who steal or attempt to steal votes. They illegally register votes, voters who don't exist, who are dead, or who are mythical. There are people who break the law to accomplish their political objectives during the voting process.

ACORN is such an organization with a deliberate, historic, proven, documented pattern and practice of illegal voter registration and political activities.

I, again, urge that one of the lessons from 2004 and 2006 should be that this Committee and the Department of Justice should undertake an immediate investigation of ACORN in order to stop their illegal voter activities.

It is time to join together to take every possible step to assure that our voting systems are secure, that only legally eligible voters cast ballots, and that every legally cast ballot is counted to the highest degree of certainty and accuracy.

Thank you, Mr. Chairman.

[The prepared statement of Ms. Mitchell follows:]

Testimony of Cleta Mitchell, Esq.

My name is Cleta Mitchell. I am an attorney, specializing in the area of political law – the business and regulation of politics, lobbying, public policy and elections.

I have been involved in law and politics for more than thirty years. It is a privilege for me to appear here today to discuss with the Committee the integrity of America's elections and voting process.

The goal of every organization, campaign and entity with which I am involved is assuring that our voting systems are secure, that only legally eligible voters cast ballots and that every legally cast ballot is counted to the highest degree of certainty and accuracy. From the Republican National Lawyers Association to the American Conservative Union to the informal groups of lawyers who practice political law as I do for Republican candidates and conservative organizations…we all are dedicated to that principle.

The question posed today is "Lessons Learned from the 2004 Presidential Election."

However, the primary argument seemingly at the heart of this hearing and every discussion of these voting issues is a fundamental disagreement on the following questions:

Is there, or is there not, voter fraud?

Is voter fraud a myth or a fact?

Are there people in America today who will deliberately register non-citizens to vote, pay people to vote for certain candidates, seek to vote multiple times, improperly influence the voting decisions and processes of the elderly, handicapped or others to essentially overtake the independent decisions of the vulnerable in order to increase the votes cast for a particular candidate and commit other illegal acts for political purposes? Are there such people in America today?

My answer to those questions is yes. There *is* voter fraud. It is *not* a myth. There *are* people who deliberately calculate ways to enhance the votes cast for their candidates and who violate federal and state laws in the process.

The public record is **full** of the examples of illegal activities surrounding our voter registration and vote casting systems.

There are well-organized forces furiously at work even as we speak, seeking to block the principle of assuring that our voting systems are secure, that only legally eligible voters cast ballots and that every legally cast ballot is counted to the highest degree of certainty and accuracy These are the people and the groups who contend that there is no voter fraud and no people who try to illegally influence the election process – and that any of us who believe otherwise are and must be racists.

Political scientist Larry Sabato and reporter Glenn Simpson, in their book Dirty Little Secrets: The Persistence of Corruption in American Politics,[1] write that "Voting fraud is back [and] becoming more serious with each passing election cycle."[2] They also write that "The fact that fraud is generally not recognized as a serious problem by

---

[1] Larry J. Sabato and Glenn R. Simpson, Dirty Little Secrets: The Persistence of Corruption in American Politics (1996).

[2] *Id.* at 275.

[the press] creates the perfect environment for it to flourish. The role played by the news media deserves a special comment. Many of the stories we have just reviewed received little or no national press attention, even when the local media carried news accounts … Partly, as noted at the outset, this results from the mistaken belief that among journalists that vote fraud is no longer a serious problem."[3] The authors also write that "Our strong suspicion … is that some degree of vote fraud can be found almost everywhere, and serious outbreaks can and do occur in every region of the country."[4] The authors recommendations, based on extensive research, is that "At the very least, a photo identification card (of any sort) ought to be produced by each voter at the polls."[5]

Mr. Chairman, you have labeled this hearing "Lessons Learned From the 2004 Presidential Election". I would like to discuss the 2004 election and lessons learned – and not to confine it to the presidential election only. And I would also point to examples of election fraud in 2000, 2002 and 2006. Because all of these elections offer some lessons to be learned: namely, that vote fraud is alive and well in the United States – and getting worse because too many officials, partisans, and the media do not take it seriously.

In 2004, I co-chaired an effort to mobilize volunteers in US Senate races. These volunteers were recruited and sent to several states to work with state Republican parties which were not targeted presidential states, but were places where competitive US Senate races existed. Two of those states were Oklahoma and South Dakota.

---

[3] *Id.* at 297.

[4] *Id.* at 300.

[5] *Id.* at 323.

I went to my home state of Oklahoma as a volunteer the last ten days before the election and coordinated an effort to assure that there were sufficient teams of volunteers at the polls on election day. A few days before the election, I received a phone call from a reporter in Muskogee, Oklahoma, asking if I was aware of a 'situation' in that area regarding the potential illegal election activities of the Cherokee tribe. As it turned out, the facts were these: Certain Tribal leaders had been sending campaign materials for Democratic Senate candidate Brad Carson enclosed in the paychecks of tribal employees, a violation of tribal and federal law. Those same leaders had been using tribal resources to travel to the federally funded Indian Health Service clinics and other government and tribal locations holding meetings with employees and patients or other consumers, campaigning against then Senate candidate Tom Coburn, in favor of congressman Carson. Persons attending the mandatory meetings were told that if Tom Coburn were to be elected, that facility would be closed. And there were plans in place by the Tribe for an election day operation to transport people to the polls using tribal and federal government offices and vehicles to do so.

Upon learning of the illegal activities already committed and the plans for even more to take place on election day, I contacted the US Attorney's office in Muskogee, Oklahoma and discussed the situation with him. I was referred to the FBI's offices in Muskogee. The FBI agent in charge essentially told me that such matters were not serious to that office.

So I contacted the Office of Public Integrity in the Department of Justice because I knew that the office maintained a 24-hour hotline in the days leading up to the election to handle election related matters. The DOJ attorneys contacted the local FBI office and let those individuals know that voting integrity *is* serious and that the allegations had to be investigated immediately. Because the Office of Public Integrity *did* take these matters seriously, the FBI *did* investigate and the illegal election-day plans were stopped.

In South Dakota, GOP attorneys were determined not to allow the 2004 election to be stolen by illegal voting as it had been in 2002, where candidate John Thune lost a United States Senate race against Sen. Tim Johnson by a mere 524 votes. Following the election, the facts began to emerge of numerous irregularities that undoubtedly changed the outcome of the election.

Take the example of the county auditor in Shannon County, where Pine Ridge Reservation is located. Finding that some addresses were incorrect, birth dates were not accurate, signatures looked similar and some cards were returned with an incomplete address, the auditor sent more than 100 registration cards to be investigated.

The investigation in South Dakota was prompted by reports that one Democrat operative, Becky Red Earth-Villeda, who was paid more than $12,000 in three months by the Democratic Party, had turned in 1750 applications for absentee ballots, many of which she apparently signed herself. She was later charged with illegal voting activity.

In the 2000 election, only 1068 people voted in predominately Republican Jackson County South Dakota. In the 2002 election, 1202 people voted in Jackson country, an increase of 134 votes or a 12.4% increase in voting over the Presidential race.

Jackson County Auditor Vickie Wilson said she turned over seven absentee ballot requests to local authorities. "I was fairly certain that someone other than the voter could have signed them," Wilson said. She said she also provided the FBI with a total of 20 absentee ballot requests for investigation. Jackson County Sheriff Bruce Madsen said three people have advised him that they did not sign the requests, and two others didn't remember signing them. Madsen said he only found one person so far who had confirmed signing a request.

In a repeat of a technique used in 2000 in heavily Democrat precincts in St. Louis, Missouri, some polling places in Todd and Mellette counties in South Dakota were kept open an extra hour. In predominately Democrat Todd County, where Rosebud Indian Reservation is located, in the 2000 Presidential election,

1546 people voted. In 2002, on the other hand, 2529 people voted, an increase of 983 or 63.5% over the Presidential race[6].

A FoxNews report on October 16, 2002 disclosed that "(f)ederal officials confirmed that a vote fraud investigation is unfolding on Indian reservations in South Dakota, home of one of the tightest U.S. Senate races in the nation:

> "Federal officials in Washington told Fox News that so far, the alleged fraud is said to have occurred on the Cheyenne River Reservation and the Pine River Reservation, and an investigation has been ongoing in six counties, including Dewey, Ziebach and Fall River.
>
> According to officials, the FBI has uncovered the registration of minors, dead people, and people who do not exist. Many of the registrations have included bogus names and invalid addresses.
> Investigators said in one case a woman was registered to vote a week after her death.
>
> They have also found multiple absentee ballots distributed to the same registered voter but returned with different signatures, the officials said.
>
> The case was brought to the attention of the South Dakota attorney general's office when county auditors began discovering problems with absentee ballot requests and votes. State Attorney General Mark Barnett said the investigation has been ongoing for two weeks.
>
> Barnett said that he hoped invalid absentee ballots haven't been filed. Absentee voting began Sept. 24 and the registration deadline is Oct. 21. "I don't even want to think about it," Barnett said. "A lot of absentee ballots are going to get looked at."
>
> Federal sources said the key suspect in the investigation is a former staffer of the state Democratic Party, whom is alleged to have falsified voter forms. The party itself has not been implicated. Officials said that because of the size of the alleged fraud, they expect to find accomplices.

---

[6] http://www.conservativetruth.org/archives/marymostert/11-11-02.shtml

> Bret Healy, executive director of the state Democratic Party, said the worker was fired as soon as the party learned of the allegations. Healy said party officials notified the U.S. attorney. South Dakota does not require a photo ID to register to vote and absentee ballots can be obtained without appearing personally."[7]

Because now-Sen. Thune did not request a recount following the 2002 election, a full record was not made of the likely theft of the 2002 US Senate race in South Dakota.

But the 2004 Thune campaign and GOP committees were prepared. Dozens of volunteer GOP lawyers travelled to South Dakota and went toe-to-toe with the well-organized vote fraud perpetrators in South Dakota. Former Sen. Tom Daschle and Democratic operatives filed numerous court actions *prior* to the election seeking to interrupt GOP efforts to watch the voting in the 2004 elections. One tribal court even issued an order to prevent GOP poll watchers from observing voting and ballot counting at polling places located on the reservation. That order was declared unenforceable by the US Attorney.

John Fund in the Wall Street Journal's Political Diary (November 1, 2004) had the following observations about a restraining order issued by a tribal court purporting to exclude Republicans from poll-watching on the reservation in 2004:

> "Two years ago, a suspicious surge in votes from South Dakota's Shannon County, home of the Pine Ridge Indian Reservation, gave Democratic Senator Tim Johnson a second term by 524 votes over Republican John Thune. Now Mr. Thune is running again, this time against Tom Daschle, the Senate Minority Leader. And once again, allegations are surfacing about shenanigans in Shannon County."

---

[7] http://www.foxnews.com/story/0,2933,65437,00.html

> "State's Attorney Lance Russell has now launched an investigation into suspicions that some residents have already cast multiple ballots. "We do have a few people who have voted more than once," he told reporters. Meanwhile, U.S. Attorney James McMahon isn't amused by a tribal judge's order aimed at preventing the state Republican Party from having any contact with Four Directions, a get-out-the-vote group financed by Democrats. The Democratic group has accused Republican monitors of videotaping them on private property; Oglala Sioux tribal Judge Marina Fast Horse duly issued a restraining order to stop the GOP efforts. But Mr. McMahon, the federal prosecutor, calls that action illegal and told the Associated Press that law enforcement officials "should not be enforcing any order on the reservation which purports to keep the Republican Party away from the polls."
>
> "There may be good reason why Democrats and tribal officials want to avoid scrutiny. Paul Brenner, a lawyer from Virginia who is observing the election on behalf of Republicans, filed an affidavit claiming that on Friday he was sitting with a poll watcher for Senator Daschle when they were approached by two women who asked when they would get paid to vote. In another incident on Thursday, he talked with another woman who was driving people to the polls. "I told (her) I had heard that the Daschle campaign office in Rosebud was offering a better deal to vote haulers than Four Directions, because they paid $10 a voter, plus a free meal at the Rosebud Casino. She said she already knew that and was also getting paid by the Daschle campaign office," Mr. Brenner wrote. [8]

We are always back at the basic dispute between those of us who want to protect the integrity of the election process and those who claim that there is no voter fraud so we don't need safeguards against something that doesn't exist.

No vote fraud? Really? Then how about more facts…

---

[8] November 1, 2004 Wall Street Journal's Political Diary reprinted at http://southdakotapolitics.blogs.com/south_dakota_politics/voter_fraud_watch/index.html

- Headline: *The Seattle Times,* October 30, 2007 "Three plead guilty in fake voter scheme". The story reads "Three of seven defendants in the biggest voter-registration fraud scheme in Washington history have pleaded guilty and one has been sentenced, prosecutors said Monday. The defendants were all temporary employees of ACORN, the Association of Community Organizations for Reform Now, when they allegedly filled out and submitted more than 1,800 fictitious voter-registration cards during a 2006 registration drive in King and Pierce counties." Attached to my testimony today is the Settlement Agreement between King County and ACORN, entered into one year ago today by that organization to avoid criminal and civil prosecution.

- Acorn's efforts to register voters have been scandal-prone elsewhere. St. Louis, Mo., officials found that in 2006 over 1,000 addresses listed on its registrations didn't exist. "We met twice with Acorn before their drive, but our requests completely fell by the wayside," said Democrat Matt Potter, the city's deputy elections director. Later, federal authorities indicted eight of the group's local workers. One of the eight pleaded guilty last month.

- ACORN' s vandalism on electoral integrity is systemic. ACORN has been implicated in similar voter-fraud schemes in Missouri, Ohio, and at least 12 other states. The *Wall Street Journal* noted: "In Ohio in 2004, a worker for one affiliate was given crack cocaine in exchange for fraudulent registrations that included underage voters, dead voters and pillars of the community named Mary Poppins, Dick Tracy and Jive Turkey. During a congressional hearing in Ohio in the aftermath of the 2004 election, officials from several counties in the state explained ACORN's practice of dumping thousands of registration forms in their lap on the

submission deadline, even though the forms had been collected months earlier."

- In March of this year, Philadelphia elections officials accused ACORN of filing fraudulent voter registrations in advance of the April 22nd Pennsylvania primary. The charges have been forwarded to the city district attorney's office.[9]

- 2004 – In the State of Washington, in a race for governor in which the difference between the two candidates statewide was less than 2000 votes, the following facts appeared in the Plaintiffs trial brief:

"Subsequent discovery has revealed that the counties, principally but not exclusively King County, counted hundreds of votes cast by persons who were disqualified from voting as felons, and a smaller but significant number of persons who voted twice, or who voted using the voter names and registrations of persons who had died prior to the election. Discovery has also confirmed what the press reports were indicating, that King County's election processes, and its compliance with its processes, were grossly inadequate. Many felons were permitted to vote. More than a thousand votes were cast by persons whom King County had failed to ensure were qualified and registered voters, and whose identities can not now be determined. These votes, like those of felons, double voters and "deceased" voters, were illegal.

[9] Michelle Malkin, "The ACORN Obama Knows," National Review (June 25, 2008).

- 2001 -- The state of Missouri established a bi-partisan commission to review the events of November 7, 2000 in which 1,233 persons who were not legally qualified to vote in the State of Missouri nonetheless cast ballots upon obtaining court orders, falsely claiming to be eligible. The evidence demonstrated that a concerted effort was planned in *advance* of election day to not only illegally extend the hours for voting beyond the statutory period but also to obtain court orders authorizing votes to be cast by persons not legally eligible to vote. Clearly, this was a plan to violate the integrity of the voting system in the state of Missouri – which succeeded. Key findings include votes cast by:
    * convicted felons
    * people who voted at least twice, possibly more than twice
    * deceased persons
    * persons registered at vacant lots
    * multiple names registered at the same address – which addresses are not multiple family dwellings, nursing homes, dorms, hospitals or group homes
    * The primary lawsuit brought by the Democrats in Missouri to keep the polls open beyond the statutory poll closing time had a lead plaintiff who was deceased. When the fact was brought to the attention of the attorney, he responded that it was another person by the same name who had not been allowed to vote – a review of the records revealed that *that* individual had voted earlier in the day without difficulty.

- November 15, 2007 –from The Politico "Twenty percent of students polled by their peers at New York University said they'd exchange their vote in the next presidential election for an iPod touch. Sixty-six percent would exchange it for free tuition. And fifty percent said they'd lose the right

> forever for $1 million. Ninety percent of the students who said they'd give up their vote for the money also said they consider voting "very important" or "somewhat important"; only 10 percent said it was "not important." Also, 70.5 percent said they believe that one vote can make a difference — including 70 percent of the students who said they'd give up their vote for free tuition.

Here is a fact: there ARE people who steal or attempt to steal votes. There ARE people who willingly sell their votes. There are people who break the law to accomplish their political objectives during the voting process.

ACORN is such an organization with a pattern and practice of illegal voter registration and political activities. ACORN should be under scrutiny by the Congress and the Department of Justice for their illegal conduct across state lines. Their federal grants and contracts should be rescinded and they should not be allowed to be involved in further despoiling the voter rolls in state after state.

The lessons learned from 2004…and 2000 and 2002 and 2006 are the same. There are groups and individuals who are intent upon registering persons to vote who are not eligible under the law, or registering non-existent 'people'. There are people who cast more than their own ballots – and literally steal elections. These are illegal acts. They must be taken seriously and prosecuted – and stopped.

It is time to join together to take every possible step t**o assure that our voting systems are secure, that only legally eligible voters cast ballots and that every legally cast ballot is counted to the highest degree of certainty and accuracy.**

Thank you.

Mr. NADLER. I thank the witness.

In the interest of fairness and comity, I will now read the biography of Mr. Blackwell that's finally arrived, and then we'll get to questioning the witnesses.

J. Kenneth Blackwell is the Ronald Reagan Distinguished Fellow at the Buckeye Institute for Public Policy Solutions. He served as Ohio's 51st Secretary of State from 1999 to 2007. He has served as the major of Cincinnati, undersecretary at the U.S. Department Housing and Urban Development, and as the U.S. Ambassador to the United Nations' Human Rights Commission. In 1994, he became the first African-American elected to a statewide executive office in Ohio when he was elected Treasurer of the State.

It is now time for questioning of the witnesses. As we ask questions of our witnesses, the Chair will recognize Members in the order of their seniority on the Subcommittee, alternating between majority and minority, and provided that the Member is present when his or her turn arrives. Members who are not present when their turn begins will be recognized after the other Members have had the opportunity to ask their questions. The Chair reserves the right to accommodate a Member who is unavoidably late or only able to be with us for a short time.

I will begin by recognizing myself for 5 minutes to question the witnesses.

My first question is to Mr. Tokaji. Is that how——

Mr. TOKAJI. Yes, that's correct.

Mr. NADLER. We have just heard Ms. Mitchell claim that voter fraud is a widespread problem. Do you agree with this assessment?

And let me give a second question, Ms. Mitchell also talked in particular about ACORN and perhaps others who register people who don't exist, Donald Duck, Mary Poppins—although I know of no reason why Mary Poppins shouldn't vote, but anyway——

Mr. FRANKS. She's a Republican.

Mr. NADLER. Well, that may be.

In any event, but who register people who don't exist. Is there any evidence that there's a large scale or any existent problem with people claiming to be the imaginary voters showing up to the polls and actually voting?

Mr. TOKAJI. Let me answer the second question first.

Mr. NADLER. Use your mike.

Mr. TOKAJI. Let me answer the second question first, Mr. Chairman.

The answer is a resounding no, and what you have just heard from Ms. Mitchell, unfortunately, is a prime example of what I discussed in my testimony earlier; exaggerated and hyperbolic allegations of fraud that distort the debate over election reform.

I'm a law professor, so I prefer to be analytic rather than rhetorical in discussing these issues. So let's break down the different kinds of fraud which tend to get conflated in public debates.

First, there's insider fraud. Someone on the inside, an election official for example, stuffs ballots or manipulates code to change the result. We do have some historical examples of that.

Second, registration fraud. False registration forms are submitted, for example, Mary Poppins. Now this did happen to some extent in the 2004 election. The problem was that registration

groups were paying people by the registration form. And this is a problem that's easily correctable if we simply change the incentives, require that people be paid on an hourly basis rather than on a per-registration-form basis. That destroys the incentive to engage in that sort of registration fraud.

And then there's voter fraud, which can be broken down into two sub parts. There's absentee fraud, and there's voters going to the polls pretending to be someone they are not. Now voter fraud is rare, but to the extent it occurs, it's mostly with absentee ballots, not with voters going to the polls pretending to be someone they are not. And that makes sense from a commonsense perspective.

What voter in his right mind is going to go to the polls, pretending to be someone that he or she is not? The benefit is minimal. The cost in terms of the sorts of prosecutions that have been brought and indeed should be brought when a voter really does that are enormous.

Mr. NADLER. Thank you.

Mr. Blackwell, it is well known that, during the 2004 election, you served both as the chief elections official of Ohio and the honorary cochair of the Committee to Re-Elect George Bush.

In a letter after the election you wrote: "My friends, not only would a Kerry victory have been a terrible result for Ohio, it would have been a horrible outcome for the families and taxpayers of America."

And I'm sure you believe that, and you're entitled to that belief, obviously.

My question is, do you think it is a conflict of interest for someone who is a strong partisan and officially a strong partisan, chairman of the Committee to Reelect or chairman of the Committee to Defeat, to be simultaneously in charge of running an election?

Mr. BLACKWELL. No, sir. Our system is a bipartisan system, equally balanced at the county level where the votes are counted. And Ohio had a tradition of Secretaries of State being cochairmen of the State campaign committees of Presidential candidates; Sherrod, Senator Sherrod Brown was a cochairman of——

Mr. NADLER. I'm not——

Mr. BLACKWELL. No, no, no, what I'm—I'm trying to—I'm trying to give you.

Mr. NADLER. Tradition.

Mr. BLACKWELL. What the tradition was, what the safeguards are, where the votes are——

Mr. NADLER. Let me ask you the following. I'm not saying you did anything different than anybody else.

Mr. BLACKWELL. No, no, no.

Mr. NADLER. But my question is, you're saying that, on the local level, there are bipartisan Boards of Elections, but the chief official, the Secretary of State, makes decisions that can affect things. Do you think that, whether it is traditional or not, that it is inherently a conflict of interest for someone who is in fact in a position to make decisions without two Secretaries of State?

Mr. BLACKWELL. Don't, don't—Mr. Chairman, what I'm saying—don't separate the individual Secretary of State from the structure that is guaranteed to protect against a partisan Secretary of State. Secretaries of State run for election as a Republican, Democrat,

Libertarian, Green party member in the State of Ohio. They run as a partisan.

Now, if you go back and you change the Constitution, and Secretaries of State become appointed and—or there's a board that's—my colleague here has suggested that we have, where you have a Secretary of State that is not partisanly elected, then I'm comfortable with that.

Mr. NADLER. So you would not think—my last question because my time has expired—you would not think it a good idea, for example, if Congress exercising our power to regulate Federal elections, were to require that the chief election administrator in every State not be a partisan figure?

Mr. BLACKWELL. I think that would be a Federal reach, and in terms of, we don't have a national election system. We have 50 State election systems.

Mr. NADLER. Forgetting our power to do it, it would be——

Mr. BLACKWELL. No, no, no. And I don't want to separate it from your constitutional powers and the constitutional rights of States and individual citizens.

Now, what I think is important here is that the integrity of the system is protected by how it is structured. I think that elections and votes should continue to be counted at the local level. I believe that the two, that the bipartisan system of checks and balances are in place. And I think Ohio's tradition of electing its Secretary of State is healthy. It works, and it has produced good elections.

Mr. NADLER. Thank you very much.

My time has expired.

I now recognize for 5 minutes of questioning the distinguished Ranking Member of the Subcommittee, gentleman from Arizona, Mr. Franks.

Mr. FRANKS. Well, thank you, Mr. Chairman.

Thank you, Mr. Blackwell, for being here, and the rest of the panelists here.

Mr. Blackwell, I've got to, you know, I have a disclosure here. I hold you in the highest esteem. I believe you're an example of what an elected official should aspire to. And so I want to be very up front; I'm very biased in your favor.

With that said, I'd just like to ask you, as a Secretary of State, what do you think the responsibility of someone from either party really is when it comes to protecting the voting process? What are the things that you believe in your heart are the most important to the race?

Mr. BLACKWELL. It's pretty simple, we have to protect the integrity and the fairness of the system. And we have to deal with weaknesses structurally in the system that would allow for one person's vote to be nullified by another's illegal tampering or fraudulent vote in the system.

I think it's, and again, I go back to the confidence in Ohio's system. Not one of the State party officials of either party have been party to a suit questioning the integrity of the system because of the soundness of the system. And so the chief election officer has to deal with the soundness of the system. It has to do with—he or she has to deal with the integrity of the vote. And I think that's very important.

Let me underscore something and use this opportunity. You know, we heard, and I tell you, this is the one thing that I lost some sleep over, and that was the whole paper weight issue. And I think that because we have revisited this issue, that it is very, very important that we go back to the testimony of Mrs. Patricia Wolfe given before the House Committee on Administration in Columbus, Ohio, on March 21st, 2005. She gave a historical overview.

The reason there was a paper weight provision at all was, back in the early 1990's, a decision was made after the U.S. Postal Office came to the Secretary of State's Office and said, you are losing a lot of your voter registrations through the mail's sorting system; they are being destroyed, and people's registrations have been eliminated. So they went to a paper weight that could go through the sorting machine and avoid destruction.

In 2004, something interesting happened. Because there were campaigns to get higher numbers of people registered, people started to get paid for the number of registrations that they delivered. And so they wanted the photo opportunity, and they started to bring it in. Well, now with most of the registrations coming in over the counter, as opposed to through in the mail, there was actually no need for the paper weight requirement.

Once that was made, once that evidence was made clear to me—it wasn't pressure; it was evidence, and lawyers are not the only folks who deal with evidence and logic—we in fact made a change in the system.

The reason I bring that to your attention is because Patricia Wolfe was the election administrator under Bob Taft, under me and presently under Democrat Jennifer Brunner. She made a compelling case as to what happened, why it happened, and how we made a midcourse correction.

But this notion, this imagery that we in fact changed under the heavy hand of pressure is just wrong. We changed based on logic, and we changed based on the fact that the registrations were coming in over the counter as opposed to doing the mail or through the mail.

Thank you. That's what you have to do. We run elections. Election officials run elections. It is a very fluid process. You have to make judgments, you know, day in, right up until the election is executed. And if you can't take the heat of criticism when you have to make those sort of decisions, then you ought not be a Secretary of State or an election official. The integrity of the system is what matters because it then protects against anybody tampering with the system, whether it be the Secretary of State or some fraudulent voter.

Mr. FRANKS. Well, thank you, sir, and thank you for your service.

Mr. Chairman, my time has expired. Thank you.

Mr. NADLER. I thank the gentleman.

I now recognize for 5 minutes the distinguish Chairman of the full Committee, the gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you very much, Mr. Chairman.

Attorney Mitchell, you said you have detected fraud in about 30 States or so?

Ms. MITCHELL. I quoted from various articles which have indicated that from many sources.

Mr. CONYERS. Yeah, but how many do you believe?

Ms. MITCHELL. I believe that there is the potential for voter fraud in every jurisdiction. Larry Sabato and Glen Simpson in their 1996 book said that it is——

Mr. CONYERS. Okay. Well, what about Ohio?

Ms. MITCHELL [continuing]. In every region and is growing.

Mr. CONYERS. What about Ohio?

Ms. MITCHELL. I believe it was evident in 2004. That's been documented.

Mr. CONYERS. So that was the fraud you found out about in Ohio?

Ms. MITCHELL. That's the fraud that I've testified to today.

Mr. CONYERS. Nothing else?

Ms. MITCHELL. I know of no other voter fraud in Ohio.

Mr. CONYERS. In Ohio, okay. That's great.

Have you ever heard of a book, "What Went Wrong in Ohio"?

Ms. MITCHELL. No. I haven't read it. I've heard of it.

Mr. CONYERS. You heard of it, okay.

Ms. MITCHELL. So you would agree with me that there is voter fraud, then? That's my main concern is that there is voter fraud, and we have laws to try to guard against it, and we ought to enforce the laws, and we ought to quit arguing about whether or not it exists. It does exist. People steal votes——

Mr. CONYERS. You're using up a lot of my 5 minutes.

Now, Mr. Blackwell, thanks for coming.

Mr. BLACKWELL. Thanks, Mr. Chairman.

Mr. CONYERS. About how many times were you sued about voter issues as Secretary of State of Ohio?

Mr. BLACKWELL. Over the course of the 2004 election, if my recollection serves me correctly, about 40 times. And there were issues—and let me just give you a——

Mr. CONYERS. No, I don't need any examples.

Mr. BLACKWELL. No, no, no, Mr. Chairman, if you don't mind, let me just give you an example because it's one that comes up all of the time.

Mr. CONYERS. Well——

Mr. BLACKWELL. And that was, for instance, Ohio was one of the 27 States that said that, for a vote to be counted, it had to be cast in the right precinct in the right county. And I took the position that that was State law and it should be defended as it was defended by the other 26 States that had that same law, and we won.

But all of a sudden, those who wanted, you know, voters without borders saw me as some sort of enemy when I saw myself and others who defended votes being counted in the right precinct in the right county as being protectors of the integrity of the system.

Mr. CONYERS. Okay.

Do you know that your State is, I think, the first State in the Union to be challenged to have the electors counted in the Congress because of voter irregularities. I think that law was passed in 1877.

Mr. BLACKWELL. It didn't surprise me, given at the time I thought it was—and I say this in respect for the two-party system—to discredit the outcome, because they didn't like the outcome. So, as you know, in this very suit-happy culture that we live

in, it doesn't—I anticipated, so therefore it doesn't surprise me that we would be sued.

What is interesting is that our position in these suits, when it came to the integrity of the system and the consistency of our application of the law, was upheld.

Mr. CONYERS. Well, yeah. There was a Republican Majority in the Congress at that time.

Mr. BLACKWELL. Mr. Chairman.

Mr. CONYERS. You don't have to explain it to me. I was there. You don't have to—I don't want you to make——

Mr. BLACKWELL. You raised a question.

Mr. CONYERS. Just a moment, sir. I ask questions. You respond.

Mr. BLACKWELL. I was still responding.

Mr. CONYERS. No, you are not still responding.

Mr. BLACKWELL. I was still responding.

Mr. CONYERS. Well, I am cutting you off.

Mr. BLACKWELL. Because you don't want to hear the answer.

Mr. CONYERS. I want to get my questions out.

Mr. BLACKWELL. Yes, sir.

Mr. CONYERS. We come here in a little bit of an artificial atmosphere here. We are acting like nothing went wrong, or much went wrong, and there have been books written about what happened in Ohio; there have been challenges based on the exit polls that the result was the most unusual in recorded history.

I happen to have brought a dozen Members or so to Ohio, to Columbus, including the Chairman of the Constitution Subcommittee; Maxine Waters, on this Committee; a couple or three of Members of Congress, all to hear—and I happen to have the testimony here, which we are going to put in the record. But the whole point of this thing is that there were citizens testifying there were lots of irregularities, plenty of them, and they were pretty mad about them. And they weren't all Democrats. Did you follow that at all?

Mr. BLACKWELL. Yes, sir. I followed it because——

Mr. CONYERS. Well, wait a minute. Just a moment. You said yes. That is what I want to know. Stop there.

Mr. BLACKWELL. A good lawyer technique.

Mr. CONYERS. Will you explain to me, since you said you followed it, what did you surmise from all the testimony that we gathered?

Mr. BLACKWELL. Let me give you a couple of for instances.

Mr. CONYERS. Just answer the question.

Mr. BLACKWELL. Let me give you a couple of for instances. This is what I surmise. One, a lot of the discussion was around provisional ballots and where we counted them and how we counted them. Ohio had a 78 percent validation rate, the third best in the country, because, one, we had a process, a procedure that had been publicly advocated, so much so that we spent $2.5 million to make sure that voters—in an unprecedented expenditure to make sure that voters voted in the right precinct, they knew how to make sure they were in the right precinct so that their vote counted, and I think that helped to give us a high validation rate.

Mr. Chairman, look, as I explained to you, a lot of the controversy was—there are a lot of people with imaginations akin to Jonathan Swift's. There will be films put out against the assassination of President Kennedy. So just because somebody makes a film

or somebody makes a charge doesn't mean that there is any fact to that.

We believe, and I continue to believe, that there was a good election in Ohio. It was not a perfect election, but we don't let the perfect be the enemy of the good.

Mr. NADLER. The time of the gentleman has expired.

We are going to try to get in one more question before we have to vote. The gentleman from Ohio Mr. Jordan.

Mr. JORDAN. Thank you, Mr. Chairman. I appreciate the witness and the panel we have here.

Some of those books that were written, articles that were done were people who had helicopters circling the statehouse and believing in these conspiracy theories that Mr. Tokaji said that just frankly aren't true. In fact, don't take my word for it, or Secretary of State Blackwell's word for it; take the Plain Dealer, not necessarily a friend of Republicans in Ohio. But I have got headlines here: "Conspiracy Theories of Ohio Vote Refuse to Die." "Delays At the Polls Weren't a Scheme."

In fact, if Mr. Blackwell was so great in orchestrating this conspiracy—he was our secretary of state in 2000, 2002, 2004, and in 2006, when he also happened to be running for the highest office in our State, running for Governor. If he could rig the deal in 2004, you would think, you would think he could rig it in 2006 when he was trying to be our Governor. Some of this stuff is just crazy.

But I did want to go to Ms. Mitchell and ask you, the provisional ballot decision that Secretary Blackwell implemented, which basically said you have to vote where you live and where you are registered, if we hadn't have done that, and the experience you have had with ACORN and what they have done around the country, talk to me about what could have happened in Ohio but for the decision that Mr. Blackwell implemented.

Ms. MITCHELL. Congressman, that is really an important question, because as you are probably well aware, there was more than one piece of legislation floating around in both the House and the Senate to state as a matter of Federal law that provisional ballots do not have to be counted just in the county or the precinct of the voter's purported residence. I think that the——

Mr. JORDAN. The potential for mischief, if you let someone on election day just vote anywhere, and what can happen, that is huge.

Ms. MITCHELL. The problem is that we don't have a system where people in every State—where they have to show identification in order to register. So we have a situation where if they don't have to—if they can register by mail, which they can in many States, but many States also then require that you have to show a voter identification, some kind of identification, photo ID, the first time you vote after you have registered without presenting identification. If you don't have to show identification when you register, and you don't have to show identification when you vote, or you can vote by mail, and you know that there are these groups out there—I would respond to Mr. Tokaji in that the reason that I wanted all of those matters related to ACORN and the court proceedings entered into the record is because these are not myths that I have fabricated. These are from court official documents. But

if you have all of these situations where you have the fraud in the registration and then people coming in and being able to vote, whether they cast a provisional ballot anywhere, and they don't have to show identification, what, pray tell, is the safeguard to protect against the total breakdown of our election process? I just don't get it.

Mr. JORDAN. Well said.

Mr. Tokaji, do you think you have to vote where you live and in the precinct you are supposed to vote in? I mean, do you agree with the provisional ballot decision we had in Ohio?

Mr. TOKAJI. I don't agree with that decision, and let me explain why and why this scenario that was just spun out is a fanciful one.

Mr. JORDAN. Let me say one thing. So you think someone should be able to show you up in any county, not vote in the precinct that they are assigned to vote in, not vote in the county; you think they should be able to vote anywhere.

Mr. TOKAJI. I think jurisdiction as Congress used it in the Help America Vote Act means registrar's jurisdiction as it is used in the National Voter Registration Act, which in most States is the county. So a provisional ballot would only have to count for Federal offices only if you vote in the correct county.

What happens as a realistic matter, and this is documented by Ohio's provisional voting data, is some voters, whether from their own mistake or because they are sent to the wrong precinct, vote in the wrong precinct. Indeed, a lot of time they will go to the right polling place, but there are several precincts at the polling place, and they will get directed to the wrong precinct. And those people's votes in Ohio right now don't count. I think that that is most unfortunate.

The possibility of multiple voting is really a myth, given that Congress in 2002 mandated State registration databases that will catch those people, and indeed someone was just prosecuted for double voting, caught by that very State registration database that Congress wisely mandated in 2002.

Mr. JORDAN. Thank you.

I have got 30 seconds. I wanted the last few seconds for Secretary of State Blackwell.

Just again comment, because this is something—88 counties, 2 Republicans, 2 Democrats on every county board of elections. I have got stuff here or an article here from Richard Smolka, Elections Magazine, talking about how that bipartisan system works. Talk to me about that real quickly, if you could.

Mr. BLACKWELL. It really does work. Again, I just want to underscore there are no perfect systems. Yes, there were mistakes made. You look forward and say, how do we prevent those mistakes from being made again? I think that we do it by not damning a system that has in the main worked as a bipartisan system, Democrats, Republicans.

Not one of those election officials, Democrat or Republican, said that there was anything wrong with the system. That sort of confidence by Democrats and Republican parties in the bipartisan system helps to build public confidence.

Mr. NADLER. Thank you.

There are four votes on the floor. There is 1 minute and 2 seconds left on the vote. They will delay it a bit. So I ask the witnesses to remain. I ask the Members to come back as soon as the votes are finished, and I declare the Committee stands in recess.

[Recess.]

Mr. NADLER. The Committee will resume from its recess for votes, and we will continue with our questioning. I recognize for the purpose of questioning the gentleman from Alabama Mr. Davis.

Mr. DAVIS. Thank you, Mr. Chairman.

Mr. Blackwell, good afternoon to you. You made an observation during your exchange with Chairman Conyers that election officials run elections, and that is true enough. I am a little bit more interested what happens when election officials run campaigns, since you were the honorary Chair of the Bush campaign, which I think is a little bit unusual. Just by way of a reference, in the 2004 campaign cycle, were there any other secretaries of state who were Bush honorary campaign Chair in the whole country? Do you know of any?

Mr. BLACKWELL. I would imagine the secretaries of state, attorneys general who were making calls on the elections across the country, yes.

Mr. DAVIS. Do you know of any?

Mr. BLACKWELL. Yes. As a matter of fact, there were more secretaries of state that were election officials, and these were honorifics. Statewide officials normally are associated——

Mr. DAVIS. Let me represent to you, and certainly my knowledge of the universe is not exhaustive, but, frankly, I don't think that any other Bush campaign Chairs in 2004 were secretaries of states. I do know of one in 2000. I do know one in 2000, Katherine Harris.

Mr. BLACKWELL. Mine was an honorific.

Mr. DAVIS. I understand that.

Mr. BLACKWELL. No, you don't. You didn't mention that, sir.

Mr. DAVIS. Then let us stipulate you are the honorary Chair.

Mr. BLACKWELL. I was honorary co-Chair. And, yes, I do. What I am saying is that there were more secretaries of state, attorneys generals that were honorary Chairs of their respective candidates in 2004.

Mr. DAVIS. If that is your position, that is your position. That is fine.

Mr. BLACKWELL. Those are the facts.

Mr. DAVIS. I know of one. That would be Ms. Harris in 2000, and that was also a subject of controversy.

Rather than go back and forth on what honorary Chairs do, let me tell you what stands out about that. Obviously, the secretary of state has a responsibility for dealing with election law. Obviously, I fully understand that there are lower-level officials who handle a lot of the day-to-day work, but assuming that the job does what the Constitution of Ohio says it does, you have a significant role, or you had a significant role, in that process, as did Katherine Harris in 2000.

Now, this is the timeline that is intriguing to me. It was clear before the election in November 2004 that there were going to be disputed issues around the election. It seems clear to me that there were going to be efforts, and announced efforts, by the Republican

Party to challenge the registration of some voters. Obviously, that would have required some participation by election officials, including the chief election officer. It also seems very clear to me that Ohio was a pivotal State in 2004.

What month and year did you become an honorary Chair of the Bush campaign, Mr. Blackwell?

Mr. BLACKWELL. I was an honorary co-Chair of the Bush campaign in 2000, and I was an honorary co-Chair of the Bush campaign whenever they announced that——

Mr. DAVIS. So you assumed that role with all of these potential controversies going on. I fully understand your observation that there was nothing in Ohio law, nothing in Federal law that precluded you from playing that role. So that is not my point. Let us not waste time on that. But it seems to me that a reasonable secretary of state, a reasonable chief election officer might have thought that there was an appearance of a conflict of interest.

Are you now a reasonable person who had that perception, sir?

Mr. BLACKWELL. I am a very well reasonable person, but perhaps your definition of reasonableness is——

Mr. DAVIS. Would a reasonable person see a conflict of interest there?

Mr. BLACKWELL [continuing]. Is different than mine. A reasonable person who understands the bipartisan nature of our elections system. For instance, Mr. Chairman, the Franklin County chairman of the board of elections, Bill Anthony, a Democrat, a labor leader, was chairman of the Kerry campaign.

Mr. DAVIS. Was he a secretary of state?

Mr. BLACKWELL. He was the chairman.

Mr. DAVIS. Was he secretary of state?

Mr. BLACKWELL. He was the chairman of the board of elections that counts the votes. So he was actually closer to vote counting than a secretary of state.

Mr. DAVIS. Then let me——

Mr. BLACKWELL. So a reasonable person can assume that a system has a built-in——

Mr. DAVIS. Mr. Blackwell, let me make this suggestion. I don't think there is any question but that your being the honorary campaign Chair and Secretary of State simultaneously was a subject of controversy, and I don't think there is any question that people at the time said they were concerned about it and that people at the time raised the example of Ms. Harris' experience. I think it is interesting that you persisted anyway.

But let me ask you a factual question. I first learned about the exit polls having John Kerry winning Ohio around 12 on the Tuesday of the election. When did you first learn about them?

Mr. BLACKWELL. I didn't pay that much attention.

Mr. DAVIS. When did you first learn about them?

Mr. BLACKWELL. I don't recollect when I would have, in fact——

Mr. DAVIS. Did you learn about them?

Mr. BLACKWELL. I learned about it in retrospect, reading about it.

Mr. DAVIS. Did anyone call you that day and mention that the exit polls were very favorable to Mr. Kerry?

Mr. BLACKWELL. No. The answer to that question is no, because on that day I was working with 88 county boards of elections to make sure that we were managing long lines.

Mr. DAVIS. Did you have any communications that day with anyone who was part of the Bush reelect campaign?

Mr. BLACKWELL. No.

Mr. DAVIS. Did you have any communications with anyone on the White House staff?

Mr. BLACKWELL. No.

Mr. DAVIS. Did you have any communications with anyone who was in any way affiliated with the President on the day of the election?

Mr. BLACKWELL. You mean like the chairman of the Ohio Republican Party?

Mr. DAVIS. Yes. That would include him. He was my next person.

Mr. BLACKWELL. He was also the chairman of the Cuyahoga County board of elections.

Mr. DAVIS. Well, since my time is up, I will tell you why I make that point, sir.

I would like 30 seconds, Mr. Chairman.

Mr. NADLER. Without objection.

Mr. DAVIS. It is very interesting, Mr. Blackwell, and I don't know that I necessarily agree with Mr. Conyers' observations that there were improprieties that day. I haven't researched it enough to know that. But what I do think is very interesting, when the secretary of state is also a major political player and receives or is in a position to receive information about exit polls or information about voter turnout, that secretary of state would be in a position, if he wanted to, to take actions over the course—over the course of the day that could have the affect of affecting or limiting or suppressing voter turnout. And I don't know enough, Mr. Blackwell, to accuse you of that because none of us know the facts as well as you do, but the problem is you put yourself in a position. You knew there was a conflict of interest, and you didn't walk away from it.

Mr. BLACKWELL. There was no conflict of interest.

Mr. DAVIS. That may be a reason, sir.

Mr. NADLER. The time of the gentleman has expired. I think both have made their point on this.

I now recognize for 5 minutes the gentlelady from Florida.

Ms. WASSERMAN SCHULTZ. Thank you very much, Mr. Chairman.

Mr. Blackwell, I, as the Chairman stated, am from the State of Florida, where we have a particular sensitivity to the appropriate and proper counting of votes and making sure that we have elections whose integrity is preserved.

I guess the thing that I find the most disturbing, the question I want to ask you is: Would you not agree that it is at least one part of the major responsibilities of a secretary of state to expand the voter participation?

Mr. BLACKWELL. Yes.

Ms. WASSERMAN SCHULTZ. What is disturbing to me is it appears as though you spent more time as secretary of state in the 2004 election reducing or suppressing voter participation as opposed to expanding it.

Let me give you a number of examples of that. One is you created new standards on the use of provisional ballots, which disenfranchised thousands of voters in predominantly Democratic or minority areas. You rejected thousands of new voter applications simply because they were not printed on the correct weight of paper. Now, that was something I want to come back to in a second. That I find particularly unbelievable. And you prevented voters, most of them senior citizens—and I represent a district that has thousands and thousands of senior voters who use the absentee ballot process in order to be able to cast their ballots because of their frailty, in many cases. Senior citizens who had not yet received their ballots were prevented by you from casting provisional ballots on election day.

What I find the most unbelievable is that you made reference to the weight of the paper, and the reason that you made the decision to use 80-pound paper and require that on voter registration cards or the cards when they were returned with the voter's information, because it would potentially be difficult for those cards to be processed through postal machines if they were not a certain weight. Is that correct?

Mr. BLACKWELL. That is right.

Ms. WASSERMAN SCHULTZ. That was your testimony. Okay. Well, that would be understandable. Let us say that that is a sound decision that you could argue makes some sense.

What doesn't make any sense to me at all, and what I think makes it evident that you were much more focused on suppressing voter participation, is that when those cards that were not printed on 80-pound paper reached your office, you rejected them and treated them as voter registration applications as opposed to simply processing them and allowing those people to register.

Now, it is one thing if you are going to argue that you are worried about the weight of the paper not getting through the postal machines. It is completely different when the actual card has reached your office and you discard it and not allow it to be counted as a voter registration and make those people go through the process again.

Can you explain your rationale for that portion of your decision?

Mr. BLACKWELL. Congresswoman, two things. First, when the issue was brought to my attention, we reviewed it, we acted on it, and we had the courage to change our policy.

Ms. WASSERMAN SCHULTZ. Courage to change what policy?

Mr. BLACKWELL. Of the paper weight.

Secondly——

Ms. WASSERMAN SCHULTZ. Wait. But wasn't that decision yours? Wasn't it you that signed off on what the required weight of the paper had to be?

Mr. BLACKWELL. Absolutely, as a matter of the record——

Ms. WASSERMAN SCHULTZ. Because you state at the beginning of my question that you did think it was the responsibility of a secretary of state to expand voter participation. This was clearly the opposite of that.

Mr. BLACKWELL. No. You are wrong.

Ms. WASSERMAN SCHULTZ. Am I wrong that you rejected thousands of voter registration entries that were not on

80-pound paper?

Mr. BLACKWELL. Excuse me.

Ms. WASSERMAN SCHULTZ. Excuse me. Just excuse me. I am asking you a question. Is it not true that you rejected thousands of voter registration entries that were not on 80-pound paper; that you treated them as voter registration applications, even though they were not, and did not count those as registrations, and made them go through the process again? Is that true? Did do that? It is a yes or no question.

Mr. BLACKWELL. No, it is not a yes or no question.

Ms. WASSERMAN SCHULTZ. It is. Either you did or didn't do it.

Mr. BLACKWELL. On March 21, 2005, the election administrator, Patricia Wolfe, speaking to a House committee, explained to her that this was a standing——

Ms. WASSERMAN SCHULTZ. A State House committee?

Mr. BLACKWELL. No. Congressional. So it is part of the congressional record. She is still, she is still——

Ms. WASSERMAN SCHULTZ. You are still not answering my question. Did you or did you not——

Mr. BLACKWELL. She is still the administrator of elections in Ohio.

The point that I was making is that it was the policy of the office before I was elected secretary of state. It was the policy——

Ms. WASSERMAN SCHULTZ. What was the policy?

Mr. BLACKWELL. The paper.

Ms. WASSERMAN SCHULTZ. Mr. Chairman, I ask unanimous consent for an additional minute.

Mr. NADLER. Without objection.

Ms. WASSERMAN SCHULTZ. What was the policy?

Mr. BLACKWELL. The paper weight.

Ms. WASSERMAN SCHULTZ. So that is not a decision you made yourself?

Mr. BLACKWELL. It was a decision that my office had that was a continuation of a policy——

Ms. WASSERMAN SCHULTZ. My understanding is that the policy was not actually enforced until you became secretary of state.

Mr. BLACKWELL. That is not true.

Ms. WASSERMAN SCHULTZ. So before——

Mr. BLACKWELL. That is not true.

Ms. WASSERMAN SCHULTZ. Excuse me. I want to go back——

Mr. BLACKWELL. It is not true, and it is part of the congressional record as of March 21, 2005.

Ms. WASSERMAN SCHULTZ. Excuse me. I would like you to answer my question on whether or not you rejected thousands of voter registrations because they were not—simply because they were not on 80-pound paper. Did you or did you not do that?

Mr. BLACKWELL. They got processed.

Ms. WASSERMAN SCHULTZ. When? After they had to go back through the registration process?

Mr. BLACKWELL. They got processed.

Ms. WASSERMAN SCHULTZ. Were they processed the first time they were submitted?

Mr. BLACKWELL. The answer is no, because that was not the policy of the office that I—a policy that I inherited when I got elected.

Ms. WASSERMAN SCHULTZ. That was a policy you had the power to overturn.

Mr. BLACKWELL. And I did.

Ms. WASSERMAN SCHULTZ. Correct me if I am wrong——

Mr. BLACKWELL. Once the evidence was made to me——

Ms. WASSERMAN SCHULTZ. What evidence did you need? You knew the policy. You denied registrations.

Mr. BLACKWELL. Maybe you weren't sitting here when I told you or when I told the Committee that prior to the incidents in 2004——

Ms. WASSERMAN SCHULTZ. Mr. Blackwell, my time has expired, and you are dancing around the answer to my question.

Mr. BLACKWELL. No. I will answer your question. Prior to 2004, the policy of the secretary of state's office that had been put in place in the mid-'90's before I was secretary of state——

Ms. WASSERMAN SCHULTZ. Did you or did you not have the authority to change that upon becoming secretary of state?

Mr. BLACKWELL. Which I did.

Ms. WASSERMAN SCHULTZ. When? How long after you became——

Mr. BLACKWELL. Once it was told to me that most of the registrations were coming in over the counter, as I said before, as——

Ms. WASSERMAN SCHULTZ. But you didn't change it until after thousands were rejected; is that correct?

Mr. BLACKWELL. Like I said——

Ms. WASSERMAN SCHULTZ. This is the question. Mr. Blackwell, can you stop talking for 1 second, because I am asking the questions, and you are the witness.

Mr. BLACKWELL. I am giving my answer, not your answer.

Ms. WASSERMAN SCHULTZ. You are rambling and trying to run my clock out.

Mr. BLACKWELL. I am giving my answer. So give me your question, and I will give you my answer.

Ms. WASSERMAN SCHULTZ. I don't want your answer, I want an answer.

Mr. BLACKWELL. You don't want my answer.

Ms. WASSERMAN SCHULTZ. No, I do want your answer.

Mr. BLACKWELL. You don't want my answer. You want the answer that you want to fit your narrative.

Ms. WASSERMAN SCHULTZ. Excuse me.

Mr. NADLER. Can we have one speaker at a time, please? The gentlelady from Florida.

Ms. WASSERMAN SCHULTZ. Thank you. I would like to know why you didn't change the policy upon becoming secretary of state and allowed thousands of registrations to be returned and put through the process again. Why didn't you change that policy?

Mr. BLACKWELL. Because I had not looked in a crystal ball and anticipated that those registrations were going to come in over the counter——

Ms. WASSERMAN SCHULTZ. Did you think that process was fair? Did you think an 80-pound paper rule is fair?

Mr. BLACKWELL. As soon as they made the argument, made the case, I changed the policy. I did not—and the question that I have in my answer is how many of those——

Ms. WASSERMAN SCHULTZ. Is it true that you did not change the policy? You didn't change the policy until after 2000.

Mr. BLACKWELL. You want your answer. I am giving you my answer.

Ms. WASSERMAN SCHULTZ. Answer this yes or no. Isn't it true you didn't change the policy until after thousands of applications were rejected?

Mr. BLACKWELL. Registered or not, the answer is yes.

Ms. WASSERMAN SCHULTZ. But they didn't get registered.

Mr. BLACKWELL. They got registered.

Ms. WASSERMAN SCHULTZ. Not until after you made them do it again, which means thousands—you did make them do it again.

Mr. BLACKWELL. That is your answer. They got registered. They did get registered.

Ms. WASSERMAN SCHULTZ. That was not my question.

Mr. BLACKWELL. The integrity of the system is in place.

Mr. NADLER. The answer is obvious. They didn't get registered the first time. They got registered eventually.

Ms. WASSERMAN SCHULTZ. That is just not an answer he likes, and makes him look bad, so he is not answering the way we are asking it.

Mr. NADLER. I think we have heard the answer we are going to get.

Mr. BLACKWELL. We will give you the correct——

Ms. WASSERMAN SCHULTZ. Excuse me, Mr. Chairman. My time has expired, and so his time has expired.

Mr. NADLER. The time has expired. As I will state at the end of the hearing in the normal explanation, witnesses are free to expand their answers in written submissions to the Committee after the hearing is over.

Mr. BLACKWELL. Thank you, Mr. Chairman.

Mr. CONYERS. Mr. Chairman, could I ask unanimous consent to ask one further question——

Mr. NADLER. Without objection.

Mr. CONYERS. A question of the gentleman from Ohio: it has been learned that Ohio election officials, especially in Franklin County, Mr. Blackwell, had difficulty in allocating voting machines, and, as a result, voters were disenfranchised from the process. Is that correct?

Mr. BLACKWELL. There were long lines, and as a result of—it is in my written testimony.

Mr. CONYERS. But is the answer yes?

Mr. BLACKWELL. No. My—the answer is that they didn't have trouble.

Mr. CONYERS. Is the answer no?

Mr. BLACKWELL. The answer is no, they didn't have trouble. They miscalculated. The Democrat chairman or the Franklin County board of elections has said that.

Mr. CONYERS. No, I am not talking about what he said. You were the secretary of state. The answer is still no.

Mr. BLACKWELL. The voting machine distribution is made at the county level. I would hope this Committee would look at the election law and process in the State of Ohio and stop making things up out of whole cloth.

Mr. CONYERS. Look, we are not here to get your instructions. You said the answer is no, and that is what I asked you. You said there weren't voters that were disenfranchised, especially in that county. So that is the record. The gentleman has made a statement.

Thank you, Mr. Chairman.

Mr. NADLER. Thank you.

I now recognize the gentleman from Virginia for 5 minutes.

Mr. SCOTT. Thank you. Thank you, Mr. Chairman.

I don't want to go over the last question, except for just one part of it. I am not sure I heard you right. Did anyone submit an application for voter registration on something that was not 80-pound paper and not eventually vote?

Mr. BLACKWELL. No. I don't know if they did.

Mr. SCOTT. But they were registered. You were considered registered if they submitted it on less than 80-pound paper. In the fullness of time, everyone was eventually registered.

Mr. BLACKWELL. Yes, sir, that is my understanding.

Mr. SCOTT. So if they showed up, they were able to vote, as opposed to somebody who has had their form rejected, and they don't find out about it until election day when they are told they can't vote. They were told they could vote if they submitted the proper form on lightweight paper. They were considered registered to vote; is that right?

Mr. BLACKWELL. Right.

Mr. SCOTT. To follow up on another question, I think it is clear you are not the only person in a position of an election official who has partisan activity. Should election officials be governed by guidance applicable to quasi-judicial personnel rather than partisan personnel?

Mr. BLACKWELL. Congressman Scott, you have asked a great question. This is a debate that has gone on before me and after me, and that is whether or not you should take partisanship out of election management.

The Ohio system is a bipartisan—by definition, a bipartisan process. It is not an apolitical process, it is a bipartisan process. If you want to change that system, I mean, you are talking about wholesale change, and people of the State have a right to have a voice in that.

Mr. SCOTT. Bipartisan at the precinct level where you have both sides looking is one thing; it is another thing to have a dispute resolved by somebody who has a partisan interest, an overt partisan interest in the campaign.

So my question isn't on whether or not both sides—and when you have little informal elections, usually both candidates get to send somebody in the back room to watch.

Mr. BLACKWELL. It is a bipartisan system. Look, it is the same system that when Sherry Brown was secretary of state and chairman of the campaign, it is a bipartisan system all the way up the chain, and that is a fact. Unless you want to—if you want to change the nature, and I think that is a legitimate intellectual debate, as to whether or not you should move from a bipartisan system or a partisan-based system to a nonpartisan system.

Mr. SCOTT. Do you want to comment on what you meant by the awkwardness of having somebody—having a player also be the umpire?

Mr. TOKAJI. Yes, I would. Let me first agree with one thing that Secretary of State Blackwell, former Secretary of State Blackwell, said. At the local level there is a bipartisan system. We have election boards that are evenly split in Ohio between Democrats and Republicans. That is certainly true. At the State level, however, like most States, we have a secretary of state, our chief election official, who is elected as the nominee of his or her party, and Secretary of State Blackwell was quite strongly criticized during the 2004 election season for making decisions that many people perceived, I think at least in some instances correctly, as benefiting his party. And that is in part what I mean by the umpire being a player for one of the teams.

I do want to emphasize, and I don't mean this as a personal attack on Secretary Blackwell, I think the problem does go beyond him. It is an institutional problem.

Mr. SCOTT. It is not the only State—let me see if I can get another question in. Mr. Blackwell, how long should people wait before they can vote, and how long a wait would actually constitute a denial of civil rights?

Mr. BLACKWELL. I don't know the answer to that question because I think you have to look at it on a case-by-case basis and the circumstances of that time. Let me just tell you the beauty of long lines was the fact that it was the result of a successful voter registration and get out the vote effort.

Mr. SCOTT. Let me just say some have alleged it wasn't a result of the get out the vote effort, it was a result of the fact that you didn't have enough voter machines. You had fewer voting machines in some of these precincts than in the primary before that.

Mr. BLACKWELL. That is not true, Mr. Scott.

Mr. Scott, as I explained to you, to the Committee earlier, voting machine distribution is made at the county level, not by the secretary of state. It is not a central decision. It is made at the county level by the county boards of elections, and as I say in my formal testimony, those decisions are based on an historic pattern of voter turnout.

Mr. SCOTT. The Chairman is being very, very kind to let me run over a little bit. But my question was whether or not there is a length of time in which——

Mr. BLACKWELL. What I am saying is there are circumstances. In this case, the long lines were the result of a vibrant get out the vote process.

As a matter of record, I would now like, Mr. Chairman, to submit our Your Vote Counts.*

Mr. NADLER. Without objection.

Mr. BLACKWELL. In fact, we had a record turnout of African American voters in Ohio in 2004, and Your Vote Counts was a part of getting that record, and that was run from the secretary of state's office. As I described, it was the cause to make sure that votes counted and people understood——

*The information referred to was not submitted to the Subcommittee.

Mr. SCOTT. Mr. Chairman, if I can just say that the suggestion that the long lines going into hours that people had to wait, in my view, violating their rights, suggesting that that is a good thing, I think, is inconsistent with my view of civil rights.

Mr. NADLER. The time of the gentleman has expired.

I now recognize the gentleman from North Carolina for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman. Thank you for this important hearing.

I actually want to look forward rather than backwards. Although there are concerns about what happened in the last election, I am a lot more concerned about what could happen in the next election. So I want to turn, Mr. Blackwell, to the very first recommendation that you have made in Lessons Learned in Ohio, which is boards of election around the country should use the record turnout figures from 2004 to better anticipate precinct by precinct demands on voting equipment. Unless I misunderstand what you are saying, and I certainly am going to give you an opportunity to clarify it if I am misunderstanding it, I think that would create absolute chaos in this election.

If we allocate machines, vote equipment, based on a record turnout in 2004 in the 2008 election, you are going to see the very same kinds of things that you saw in the 2004 election because—I mean, I presume that boards of election in the past have allocated based on a hindsight view of what has happened in the past rather than a future site view of what they anticipate is going to happen in this election. And for us to be looking at turnout in 2004, unless I misunderstand what you are saying——

Mr. BLACKWELL. You didn't.

Mr. WATT [continuing]. I just don't understand how you can be recommending that we look at 2004 numbers to calculate this. That is my first concern with it.

The second concern I actually want to address to the professor, because when you say boards of election—and I am going to get both of these. I am not depriving you of the right to answer. I don't play the game that way. I just want to get my questions on the record so that everybody can see where I am going.

If I read Article I, section 4 of the Constitution that says time, places, and manner of holding elections for Senators and Representatives shall be proscribed in each State by the legislature thereof, but the Congress may at any time by law make or alter such regulations.

We have got a Presidential election. I don't see anything in section 4 about a Presidential election. And so the question I want to ask is would we as a Congress have the authority to be a lot more aggressive than we have historically been in making these kind of machine allocation decisions? I know it is micromanagement, but if we want a fair Presidential election, and we want to hold ourselves up around the world as the pinnacle of democracy, do we, under those circumstances, have more authority in a Presidential election, and how could we do that?

Maybe I will let Mr. Blackwell go first on his part, and then you go second.

Mr. BLACKWELL. Congressman Watt, the answer to your question ties into what Mr. Scott was asking also. There is a practical consideration of dollars and cents. Now, if you tell secretaries of state that you can have budgets allocated by the general assembly on an anticipated turnout increase so that you can now redistribute voting machines, then I am sure a lot of folks would be anticipatory in the number of machines——

Mr. WATT. You are talking about a budget matter, former Secretary Blackwell.

Mr. BLACKWELL. I am talking about number of machines, sir.

Mr. WATT. I am talking about the allocation of machines. Let me read you what your recommendation is again.

Mr. BLACKWELL. But you have to have the machines to allocate. And you are saying let us be forward-looking and anticipate——

Mr. WATT. That is one part of it. Let me read you what you said. You said you adopt what you say, and I am telling you that what you say, if read the way you said it, doesn't make sense to me. Maybe it makes sense to you. You said, boards of election around the country should use the record turnout figures from 2004 to better anticipate precinct by precinct demands.

So basically what you are saying, I should look at 2004. I got a selected number of machines. And I can anticipate that the precinct-by-precinct turnouts are going to be equal. I can have 100 machines. In this election, you are going to have a whole different pattern of turnout, even within the State.

Mr. BLACKWELL. If you look at my complete statement——

Mr. WATT. I am reading the complete statement. Let me read it to you: Boards of election around the country should use the record turnout figures for 2004 to better anticipate precinct by precinct demand on voting equipment.

Mr. BLACKWELL. Keep reading, because the big number is 1 to 75, sir. So go all the way down to that, and you will begin to understand the management and fiscal realities the secretaries of state have to live within. And if you will look at that——

Mr. WATT. I understand management and fiscal realities, but if I had a million, gazillion dollars, Mr. Blackwell, I wouldn't allocate 2008 machines based on 2004 turnout. That would be the ultimate act of insanity, in my opinion.

Mr. BLACKWELL. Because you don't, Congressman Watt——

Mr. NADLER. The gentleman's time has expired. The witness can respond briefly.

Mr. BLACKWELL. Because you don't. Secretaries of state are allocated budgets, and boards of elections are allocated budgets from their county commissioners, so they can only distribute machines based on the dollars that they have to purchase machines.

Mr. NADLER. Thank you.

Mr. Tokaji wanted to comment.

Mr. TOKAJI. I will try to briefly respond.

Mr. WATT. On the second part.

Mr. TOKAJI. On the second half of your question.

My opinion is that Congress would have the authority under Article I, section 4 of the Constitution, the elections clause, to regulate the number of voters per machine for U.S. House and U.S. Senate elections.

Mr. NADLER. Presidential elections?

Mr. TOKAJI. Presidential elections, Article I, section 4 wouldn't give that power. There might, however, be authority to protect the fundamental right to vote under section 5 of the 14th amendment to the Constitution.

Mr. NADLER. Thank you. The time of the gentleman——

Mr. WATT. I ask unanimous consent for 15 seconds.

Mr. NADLER. Without objection.

Mr. WATT. Just to argue with his interpretation of this, this gives the right to States to allocate for House and Senate. It doesn't say anything about President. Doesn't give Congress the right. I think you got it backwards.

Mr. TOKAJI. Correct. Congress can make or alter such regulations for House and Senate elections.

Mr. WATT. So you are saying because this gives us no authority under Presidential elections, we would have to find authority to regulate a Presidential election somewhere else?

Mr. TOKAJI. That provision, that is correct, does not expressly give Congress authority to regulate.

Mr. NADLER. The gentleman's time has expired.

I would simply point out that if Congress decided to regulate a congressional election, it is automatically——

Mr. TOKAJI. That would get the job done, yes.

Mr. NADLER. I thank the panel for its testimony.

I will point out the announcement I usually make at the conclusion of the hearing that, without objection, your written statements are made a part of the record in their entirety, and you will have a few legislative days to respond to any questions which we may send to you or to expand upon your testimony.

I thank the panel.

Mr. NADLER. I would ask our second panel of witnesses to come forward.

While we are engaging in our maneuver here, I will read the biographies of the second panel.

Gilda Daniels is an assistant professor of law at the University of Baltimore School of Law. Professor Daniels joined the U.S. Department of Justice as a staff attorney in 1995. Between 1998 and 2000, Professor Daniels worked for the Lawyers Committee for Civil Rights Under the Law as a voting rights staff attorney. She then returned to the Department of Justice as Deputy Chief of the Voting Section in the Civil Rights Division and remained there until transitioning to academia in 2006.

Prior to working on voting rights issues, Professor Daniels represented death row inmates and brought prison condition cases at the Southern Center for Human Rights. Professor Daniels was a Root-Tilden-Snow scholar at New York University School of Law.

Hans von Spakovsky is a visiting scholar with the Heritage Foundation. During his tenure at the foundation, he has written a host of publications on voting and election-related issues. Mr. von Spakovsky has served as a member of the first Board of Advisors for the U.S. Election Assistance Commission and spent 5 years as a member of Fulton County Board of Registration and Elections.

At the Department of Justice, Mr. Spakovsky served from 2002 to 2005 as counsel to the Assistant Attorney General on Civil

Rights, providing advice in enforcing the Voting Rights Act and Help America Vote Act of 2002. In 2006 and 2007. Mr. Spakovsky was a Commissioner of the Federal Elections Commission.

J. Gerald Hebert is executive director and director of litigation at the Campaign Legal Center. From 1973 to 1994, Mr. Hebert served in various capacities within the Department of Justice, including Acting Chief, Deputy Chief, and special litigation counsel in the Voting Section of the Civil Rights Division. As chief trial counsel within the DOJ, Mr. Hebert litigated over 100 voting rights lawsuits, and from 1994 to 1995, he was a part-time staff attorney with the Lawyers Committee for Civil Rights Under the Law, specializing in voting rights cases. As an adjunct professor of law at Georgetown University Law Center, he instructed courses on voting rights, election law, and campaign finance regulation.

Before we begin, it is customary for the Committee to swear in its witnesses. If you would please stand and raise your right hand to take the oath.

[Witnesses sworn.]

Mr. NADLER. Let the record reflect the witnesses answered in the affirmative.

You may be seated.

Without objection, your written statements are made a part of the record in their entirety. We would ask each of you to summarize your testimony in 5 minutes or less. As a reminder to help you keep time, there is a timing light at your table. When 1 minute remains, the light will switch from green to yellow and then to red when the 5 minutes are up.

The first witness is Professor Daniels.

TESTIMONY OF GILDA R. DANIELS, ASSISTANT PROFESSOR OF LAW, UNIVERSITY OF BALTIMORE SCHOOL OF LAW

Ms. DANIELS. Thank you, Mr. Chairman and Members of this Committee. It is a privilege and an honor to appear before you today to discuss ways that the Department of Justice can proactively address election administration issues prior to November 2008.

I have more than a decade of voting rights experience and served as a Deputy Chief under both the Clinton and Bush administrations. Presently I am an assistant professor at the University of Baltimore School of Law, where I teach election law, among other topics.

I was a Deputy Chief in 2000 when the country was crippled with hanging chads, dimpled ballots, and faulty voting machines, and worked within the Voting Section to address the myriad of issues that arose during that election.

The 2004 election enjoyed its share of election administration problems, such as the misuse of provisional ballots, overzealous poll watchers, and ill-advised voter purges. In light of the problems and issues with the last two Presidential elections, it is vitally important that the Department use the full breadth of its statutory authority to act proactively to ensure that our Democratic process provides every eligible citizen the opportunity to access the ballot and ensure that that ballot is counted.

In 2004, in my estimation, DOJ's perspective was too retrospective and not preventive. An inordinate amount of resources went into election day activities. In order to protect the fundamental right to vote, the government must act prior to election day.

Although the Voting Section dispatched more personnel to observe elections and upgraded its tracking of election day complaints, some of the election coverage merely consisted of an attorney with a cell phone in a U.S. attorney's office. In order to have a meaningful presence that will dissuade political operatives from manipulating the voting process to disenfranchise eligible citizens, the Department should initiate contact with both State election officials and organizations to engage in a significant exchange of information in a nonpartisan and proactive way.

In my written testimony I have outlined six critical problem areas during the 2004 election cycle and proposed steps that the Justice Department should take to ensure that these problem areas are not repeated this November. I will highlight a few of those areas here.

First, voter registration. In 2004, the Department received a high number of calls from persons who stated that they registered to vote, yet their names were not on the voter roles. In many instances, these persons were new registrants, and their voter registration application was not processed. To remedy this, State election officials should ensure that the counties are processing voter registration applications in a timely manner. The Department of Justice should provide more oversight to ensure that jurisdictions are not rejecting applications that provide sufficient information to determine the eligibility of an applicant.

Further, the Department should encourage jurisdictions to do more followup with voters if the registration application does not provide enough information to determine eligibility.

Voter purges. A recent survey on voter purges reveal that two-thirds of the responding States did not require election officials to notify voters when they purged them from the voter roles, denying these voters an opportunity to contest erroneous purges. Instead of carrying out the primary function of the National Voter Registration Act to increase voter registration, the DOJ's Voting Section is concentrating its NVRA enforcement priority on pressuring States to conduct massive purges of their voter rolls.

Admittedly, States do need to maintain accurate voter roles, and DOJ should ensure that these and other purges do not violate the safeguard provisions of the NVRA. At the same time, it should not abandon other NVRA enforcement.

Voter ID. In 2000, only 11 States required all voters to show some form of identification. In 2006, the number doubled to 22 States requiring all voters to present some form of ID. Any change in rules that affect the voters' ability to cast a ballot, such as polling place changes and voter ID, can cause voter confusion.

It is important to note that new voter ID laws adversely impact students. In 2004, DOJ received numerous calls from students who were told that their university ID would not be accepted. Consequently, it is essential that the Department communicate with States to make sure that they are in compliance with voting stat-

utes, and that any changes of voting status or location is clearly communicated to the voter well before the election.

Finally, election coverage. Because of the high attorney turnover in the Voting Section, this is probably the first Presidential election for most of the Voting Section staff attorneys. The attorneys who left between 2002 and 2006 have significantly more litigation and election coverage experience than the present staff. Accordingly, it is crucial that in preparing for election coverage, the section should use its preelection calls to ensure that jurisdictions are prepared. It should release the list of jurisdictions where it will provide election observers at least 1 week prior to election day. It should also limit the practice of utilizing the U.S. Attorney's offices and the FBI, which were primarily trained in identifying election crimes or voter fraud.

After the 2000 election, and certainly by 2002, the Civil Rights Division Voting Section shifted its focus from enforcing the voting rights of minorities under section 2 of the Voting Rights Act, as evidenced in the lack of cases brought on behalf of African Americans, and to the enforcement of section 203 for language minorities, the protection of overseas and military voters, HAVA compliance, and voter fraud issues. This lack of enforcement of the Voting Rights Act would indicate a well-documented shift away from enforcement of statutes that require free and full access to a new emphasis on restricting the ballot in the name of integrity. This must be corrected.

In conclusion, DOJ should renew efforts to coordinate with civil rights and other organizations to discuss election day preparedness, and learn how these groups plan to approach various voting irregularities, and share how DOJ will address issues.

Once a person is turned away, purged, or given a provisional ballot that is ultimately not counted, after election day very little can be done to remedy that lost vote; while at the same time the disenfranchising of America's voters occur, one uncounted provisional ballot, one voter ID, one mistaken purge at a time to create a cumulative effect that could ultimately challenge the notion of our participatory democracy. Consequently, the best time to correct for potential disenfranchising methods is to establish a proactive plan now.

Thank you.

Mr. NADLER. I thank the witness.

[The prepared statement of Ms. Daniels follows:]

PREPARED STATEMENT OF GILDA R. DANIELS

Chairman Conyers, and members of this Subcommittee, it is a privilege and an honor to appear before you today to discuss ways that the Department of Justice (DOJ) can proactively address election administration issues prior to November 2008.

I served in the DOJ, Civil Rights Division, and Voting Section as a staff attorney from 1995 to 1998, then left to work in the Lawyers' Committee for Civil Rights Under Law in its Voting Rights Project for two years and returned to the DOJ in the capacity of Deputy Chief in the Civil Rights Division, Voting Section. I served as Deputy Chief for six years, from 2000 to 2006 before leaving to become an Assistant Professor at the University of Baltimore, School of Law, where I teach Election Law among other topics. I have more than a decade of voting rights experience and served as a Deputy Chief under both the Clinton and Bush administrations. I was a Deputy Chief in 2000, when the country was crippled with hanging chads, dimpled

ballots and faulty voting machines and worked within the Voting Section to address the myriad of issues that arose during that election.

Since the 2000 Presidential election the voting rights vocabulary has expanded to include terms such as, "voting irregularities" and "election protection" and created a new debate regarding voter access versus voter integrity. Despite the debates and new legislation in the form of the Help America Vote Act (HAVA),[1] and the continued enforcement of other voting statutes such as the Voting Rights Act[2] and the National Voter Registration Act, (NVRA), problems persist in the operation of our participatory democracy.

What we have witnessed since 2000, particularly during the 2004 election, gave us some reason to hope but also reason for concern. Although outdated voting machines were not the primary problem in 2004, the use of electronic voting machines birthed new concerns about accuracy and reliability, along with questions regarding poll workers' ability to master the technology. This election enjoyed its share of election administration problems such as the misuse of provisional ballots,[3] overzealous poll watchers, and ill-advised voter purges.

Many of the calls received or infractions observed on Election Day do not rise to a legally actionable level. After any election, however, no immediate remedy exists for the mistakenly purged voter or an uncounted provisional ballot. Disenfranchisement, however, occurs one voter at a time and can create a pattern for a jurisdiction or a political party that should be addressed and thwarted well before Election Day. In light of the problems and issues with the last two Presidential elections, it is vitally important that the Department use the full breadth of its statutory authority to act proactively to ensure that our democratic process provides every eligible citizen the opportunity to access the ballot and ensure that the ballot will be counted.

After the 2000 election and certainly by 2002, the Civil Rights Division, Voting Section shifted its focus from enforcing the voting rights of minorities under Section 2 of the VRA, as evidenced in the lack of cases brought on behalf of African-Americans, to enforcement of Section 203 for language minorities, the protection of overseas and military voters under UOCAVA, HAVA compliance and voter integrity (fraud) issues. In fact, this administration brought the first case pursuant to Section 2 on behalf of white voters in Noxubee, MS.[4] This lack of enforcement of the Voting Rights Act would indicate a well documented shift away from enforcement of statutes that require free and full access to a new emphasis on restricting the ballot in the name of integrity. This must be corrected.

The problem with the Voting Section's changed perspective particularly in 2004 was that it was too retrospective and not preventative. In order to protect the fundamental right to vote, the government must act *prior* to Election Day. Although the Voting Section dispatched more personnel to observe elections and upgraded its tracking of Election Day complaints, some of the "election coverage" merely consisted of an attorney with a cell phone in the US Attorneys' office. In order to have a meaningful presence that will dissuade political operatives from manipulating the voting process to disenfranchise eligible citizens, the Department should initiate contact with both state election officials and organizations to engage in a significant exchange of information in a nonpartisan and proactive way.

---

[1] The Help America Vote Act of 2002 has the stated purpose of with the stated purpose of "establish[ing] a program to provide funds to States to replace punch card voting systems, to establish the Election Assistance Commission (EAC) to assist in the administration of federal elections and to otherwise provide assistance with the administration of certain federal election laws and programs, to establish minimum election administration standards for States and units of local government with responsibility for the administration of federal elections, and for other purposes." Help America Vote Act (HAVA), Pub. L. No. 107–252, 116 Stat. 1666 (2002); The HAVA is codified at 42 U.S.C. 15301 to 15545.

[2] The Voting Rights Act, (VRA), which has been heralded as the most effective piece of Congressional legislation in our nation's history, outlawed practices such as literacy tests, empowered federal registrars to register citizens to vote, and gave the Attorney General the power to bring widespread litigation instead of the piecemeal approach of the past. As a result, wide disparities between blacks and whites in voter registration narrowed considerably throughout the South and the number of African-American elected officials increased tremendously.

[3] The Help America Vote Act requires states to provide provisional ballots, which allow voters whom election administrators would otherwise deem ineligible for reasons ranging from a lack of required ID to a voters name not appearing on the list of registered voters, to cast ballots despite lacking the proper identification or, in some states, attempting to vote in the wrong precinct.

[4] In 2005, the DOJ filed suit against the Noxubee County Democratic Executive Committee, Noxubee County Election Commission and Ike Brown, Chair of the Democratic Executive Committee in Noxubee, MS. See, *United States v. Ike Brown, et.al.,* 494 F.Supp.2d 440 (S.D.Miss. 2007)

Based upon my experience, I suggest that the DOJ employ the following proactive enforcement practices:

Voter Registration. The electoral process requires that states compile lists of eligible and legal voters. The NVRA requires States to maintain voter registration lists for federal elections. The NVRA considers applications received or postmarked at least 30 days before a federal election as timely. It also requires that election officials notify voters that their applications were accepted or rejected. The concern over voter registration is twofold: 1) the increase in state laws that restrict an organization's ability to register citizens (third-party registration) and 2) the increase in voter registration applications and election administrators' ability to process those applications prior to Election Day. Some states, e.g., Ohio, Florida, and Georgia, have made changes to voter registration procedures that make it more difficult for third parties, such as the League of Women Voters and the NAACP, to conduct voter registration drives. Litigation has already commenced in Ohio, Florida, Georgia and Pennsylvania. The inability of groups to perform voter registration could effectively diminish the number of eligible voters, who are able to register.

In 2004, the Department received a high number of calls from persons who stated that they registered to vote, yet their names were not on the voter rolls. In many instances, these persons were new registrants and their voter registration application was not processed. It is hoped that the remarkable increase in voters for the Presidential primaries alleviated some administrative processing problems.

State election officials should ensure that the counties are processing voter registration applications in a timely manner. The Department should contact those states where problems occurred in 2004, 2006 and during the Presidential primary season to make certain that jurisdictions are in compliance with voting rights statutes. DOJ should provide more oversight to ensure that jurisdictions are not rejecting applications that provide sufficient information to determine the eligibility of an applicant. Further, it should encourage jurisdictions to do more follow-up with voters if the registration application does not provide enough information to determine eligibility

Voter Purges. The NVRA also requires States to keep accurate and current voter registration lists, including purging those persons who have died or moved. Before removing persons or performing list maintenance procedures, the NVRA requires that list maintenance programs are uniform and non-discriminatory, comply with the Voting Rights Act, and can not occur 90 days before a federal election. States may only remove voters after complying with the NVRA's fail-safe provisions, which allow for removal of voters from registration lists if they have "been convicted of a disqualifying crime or adjudged mentally incapacitated," according to state law.[5] The process of removing ineligible voters from state compiled registered voter lists is called voter purge. Although state governments have passed legislation that causes specific individuals, such as felons, to be ineligible voters, voter purge can also cause the removal or invalidation of eligible and legal voters from voter lists. Florida has been the center of numerous electoral debates due to the conflicts and controversies that surrounded the 2000 elections. Critics have called the voter purges in Florida during the 2000 election as "A wildly inaccurate voter purge lists that mistakenly identified 8,000 Floridians as felons thus ineligible to vote and that listed 2,300 felons, despite the fact that the state had restored their civil rights."[6]

There are various problems surrounding how voter lists are purged. Approximately, twenty-five percent of the states in an ACLU/Demos survey reported that they compile purge lists without reference to any legislative standards. About half of those surveyed purged their voter lists using only an individual's name and address, not a one hundred percent match involving full name and social security number. No state surveyed had codified any specific or minimum set of criteria for its officials to use in ensuring that an individual with a felony conviction is the same individual being purged from the voter rolls. Two-thirds of the states surveyed do not require elections officials to notify voters when they purge them from the voter rolls, denying these voters an opportunity to contest erroneous purges.

---

[5] The NVRA also provides additional safeguards under which registered voters would be able to vote notwithstanding a change in address in certain circumstances. For example, voters who move within a district or a precinct will retain the right to vote even if they have not re-registered at their new address, which is at odds with the way some states administer provisional ballots, only counting those cast in the proper precinct.

[6] Verified Voting Foundation, *Open Voter Purge List,* http://www.verifiedvotingfoundation.org/article.php?id=2394 (June 12, 2004)

Couple this with reports that DOJ threatened to sue ten states to purge voter rolls before the 2008 presidential election.[7] Concerns have been raised that "the Justice Department's Voting Section is ignoring the primary purpose of the NVRA to 'establish procedures that will increase the number of eligible citizens who register to vote in elections for federal office.'"[8] Instead of carrying out the primary function of the NVRA to increase voter registration, the DOJ's Voting Section is concentrating its NVRA enforcement priority on pressuring states to conduct massive purges of their voter rolls. Notwithstanding these arguments, states do need to maintain accurate voter rolls and DOJ should ensure that these and other purges do not violate the safeguard provisions of the NVRA. At the same time, it should not abandon other NVRA enforcement.

Voter ID. Many states changed their voter id requirements to comply with the HAVA, which required that all first time voters who registered by mail without providing id verifying info must vote in person and provide an acceptable form of id.[9] In 2000, only eleven states required all voters to show identification. In 2006, the number doubled to twenty-two states requiring all voters to present some form of id. Opponents have argued that voter id laws cause an undue burden on poor, minority, disabled, and elderly citizens and that the expense in obtaining even the "free" ids are cost prohibitive for many Americans.[10] Proponents argue that more restrictive voter id laws are needed to prevent voter fraud.

The most restrictive requirement was passed in Indiana, which requires all voters to show a photo id before casting ballots. If the voter lacks a photo id, she must vote provisionally and subsequently return to the clerk's office and produce a photo id or sign an indigency affidavit before the vote can be counted. The Supreme Court recently upheld this law.[11] In 2005, Georgia's passage of a similar voter id law set off what has been called a "firestorm" of activity in the media. Georgia is a state covered by Section 5 of the VRA, which requires specific jurisdictions to submit all voting changes—including but not limited to, polling place changes and redistricting—to either the United States Attorney General or the United States District Court for the District of Columbia for approval.[12] Georgia's submission to the Attorney General and the subsequent preclearance of the id legislation only fueled the flames. The proposed bill reduced the acceptable forms of voter identification from seventeen to five: a driver's license, a passport, a state or government issued ID, a military ID or a tribal ID.[13]

Although courts and the Attorney General have found these voter id laws constitutional, opponents continue their concern for the impact on those less likely to possess the requisite identification and their ability to cast a ballot. With the passage of these more restrictive laws in Georgia and Ohio and more states following suit, it is imperative that the DOJ monitor those states where the voter id laws

---

[7] *See, New York Times* Opinions/Editorial, *What Congress Should Do,* October 24, 2004Stephen Roosevelt, *Bush Administration Orchestrating Massive Voter Purge Before 2008 Election,* Veteransforcommonsense.org (July 17, 2007).

[8] Id.

[9] HAVA requires the following identification: if voting in person, a drivers license or other photo id, a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter; or if voting by mail, voter must submit with the ballot a copy of a current and valid photo identification; or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

[10] New voter id laws could adversely impact students, who may have a university id, but lack a photo id with an address within the state.

[11] Recently, in *Crawford v. Marion County,* the Supreme Court found that the Indiana legislature's purported rationale for passing the most restrictive voter id law in the country did not violate constitutional principles.

[12] *See,* 28 C.F.R. Part 51, Section 5 Regulations.

[13] The 17 acceptable forms of identification were as follows: valid Georgia driver's license; valid identification card issued by a branch, department, agency, or entity of the State of Georgia; another state, or the United States authorized by law to issue personal identification; valid United States passport; valid employee identification card containing a photograph of the elector and issued by any branch, department, agency or entity of the United States government, the State of Georgia, or any county, municipality, board, authority or other entity of Georgia; valid employee identification card contain a photograph of the elector issued by any employer of the elector in the ordinary course of business; valid student identification containing a photograph of the elector from any public or private college, university, or postgraduate technical or professional school located within the State of Georgia; valid Georgia license to carry a pistol or revolver; valid pilot's license; US military ID; birth certificate; Social security card; certified naturalization documentation; copy of court records showing adoption, name or sex change; utility bill; bank statement showing name and address of the elector; government check or payment with name and address of the elector or other government document showing name and address of the elector. Ga. Code Ann. § 21-2-417.

have changed, since the 2004 election. Any change in rules that affect a voters' ability to cast a ballot, such as polling place changes, voter id, etc., can cause voter confusion. It is essential that DOJ communicate with states to make sure that they are in compliance with voting statutes and that any changes of voting status or location is clearly communicated to the voter, well before the election.

Poll Watchers. Most states allow candidates to designate persons to watch the election process inside the polling place. These poll watchers, however, are not allowed to interfere with the process. In 2004, political candidates and parties dispatched thousands of attorneys and other individuals to "monitor" the administration of the election. We saw poll watchers launch an enormous number of strategic challenges to voters' eligibility, some based on race and language ability. Additionally, in some instances, at any given time, polls had more watchers than workers or actual voters.

In 2004, Republicans in Wisconsin attempted to challenge the registrations of 5,600 voters in Milwaukee but were turned down in a unanimous decision by the city's bipartisan election board. In Ohio, Republicans challenged 35,000 voters, after compiling their names through a caging scheme.[14] The people on the list had either refused to sign letters delivered by the Republican Party or the letters had been returned as undelivered. Voters in Ohio won an injunction preventing challengers from remaining at voting-stations.[15]

The Department should send a letter to states and organizations where this practice was problematic. Outreach, through the form of a letter, to organizations and state entities, should remind these groups and elected officials of the voters' rights and the process the poll watcher and poll worker should follow. Although the process for designating a poll watcher varies state to state these laws must comply with Section 2 of the Voting Rights Act, which outlaws discriminatory voting practices or procedures.

Provisional Ballots. A consequence of excessive voter challenges was the use of provisional ballots. In some instances, due to misinformation or a lack of poll worker training, poll workers asked the challenged voter to cast a provisional ballot. In some states, if a voter casts a provisional ballot in the wrong polling place, pursuant to state rules, the provisional ballot was not counted.[16] DOJ should make certain that jurisdictions are not administering provisional ballots with a discriminatory purpose or a discriminatory result.

Election Coverage. Under Section 4 of the Voting Rights Act, the Attorney General may send federal observers to any jurisdiction that is required to submit all of its voting changes for review under Section 5 of the VRA or where provided in a Consent Decree. The majority of the Voting Section's preparation relies upon its election coverage, which dispatches DOJ personnel under the direction of Voting Section attorneys to observe Election Day activities and report any irregularities to Voting Section managers and then work with the jurisdiction to correct those problems. The Voting Section, however, has limited staff and with the high rate of career attorney turnover, the level of expertise necessary in the area of election coverage will require an even higher level of training. Because of the Voting Section's limited number of senior well trained staff, the various Election Protection programs can, at a minimum, provide the Department's toll free number and have a designated person to relay vital information of voting irregularities or voting rights statute violations to the Department. Additionally, in preparing for election coverage, the Sec-

---

[14] With one type of caging, a political party sends registered mail to addresses of registered voters. If the mail is returned as undeliverable—because, for example, the voter refuses to sign for it, the voter isn't present for delivery, or the voter is homeless—the party uses that fact to challenge the registration, arguing that because the voter could not be reached at the address, the registration is fraudulent. A political party challenges the validity of a voter's registration; for the voter's ballot to be counted, the voter must prove that their registration is valid.

[15] *Spencer v. Blackwell,* 347 F.Supp.2d 528 S.D.Ohio (2004).

[16] The administration of provisional ballots, however, has been called into question for the myriad of ways that election administrators determine whether to count the ballot. In 2004, the first year that HAVA required state's to provide provisional ballots, nearly 1.9 million of those ballots were cast and 1.2 million provisional ballots were counted, which left more than half a million people disenfranchised. See, Election Data Services, *Election Day Survey,* conducted for the U.S. Election Assistance Commission, at 6–5 (Sept. 27 2005). Moreover, poll worker confusion and unavailable ballots accounted for even more disparities. A People for the American Way report found:

> There was widespread confusion over the proper use of provisional ballots, and widely different regulations from state to state—even from one polling place to the next—as to the use and ultimate recording of these ballots.

See, People for the American Way et al., *Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections,* at 8 (December 2004).

tion should use its pre-election calls to insure that jurisdictions are prepared. It should also release the list of jurisdictions where it will provide election observers at least one week prior to Election Day. It should also limit the recent practice of utilizing the US Attorneys' offices and the FBI, which were primarily trained in identifying voter fraud.

Today, American citizens are registering to vote at exceptionally high rates. Minority and young voters are energized and eager to turnout and participate in what has certainly proven to be one of the most historic election cycles in our lifetimes. However, these efforts will prove futile if ultimately, these voters are unable to cast ballots that will count on Election Day. In my testimony, I have outlined some of the critical problem areas during the 2004 election cycle and proposed steps that the Justice Department should take to ensure that these problems are not repeated this November. However, it is essential that the Department act now.

In conclusion, DOJ should renew efforts to coordinate with civil rights and other organizations to discuss Election Day preparedness and learn how those groups plan to approach various voting irregularities and share how DOJ will address issues. Once a person is turned away, purged, or given a provisional ballot that is ultimately not counted, after Election Day very little can be done to remedy that lost vote. While at the same time, the disenfranchising of America's voters occur one uncounted provisional ballot, one voter id, one mistaken purge at a time to create a cumulative effect that could ultimately challenge the notion of our participatory democracy.[17] Consequently, the best time to correct for potential disenfranchising methods is to establish a proactive plan NOW.

Mr. NADLER. Mr. von Spakovsky is recognized for 5 minutes.

TESTIMONY OF HANS A. von SPAKOVSKY, VISITING SCHOLAR, THE HERITAGE FOUNDATION

Mr. VON SPAKOVSKY. Thank you, Mr. Chairman. I appreciate the invitation to be here today.

The largest group of disenfranchised voters in the country by far remain overseas voters, particularly military voters and their families. The Uniform Overseas Citizens Absentee Voting Act of 1986 guarantees their right to vote. However, out of an estimated 6 million potentially eligible UOCAVA voters, the EAC, Election Assistance Commission's, 2006 survey found that less than a million ballots were requested. So only 16½ percent of the eligible overseas voters sought to vote. Of that million ballots, only 330,000 were actually cast or counted, resulting in a turnout of only 5.5 percent of the eligible overseas voters.

Seventy percent of those ballots were not counted because they were returned—the ballots were returned—uncompleted ballots were returned to election officials as undeliverable. The others were not counted because they returned after the deadline for receipt.

These problems were due to the fact that military personnel moved fairly often to new bases and locations, and because of the slowness of the overseas mail system that's still used for these absentee ballots. It can take more than 30 days for a ballot to make a round trip between the United States base in Iraq, for example, and coming back. And it is vitally important that States mail out absentee ballots at least 30 days before the election and hopefully 40—at least 45.

In 2002 and 2004, DOJ was forced to file lawsuits after counties and various States such as Georgia, Pennsylvania, and Texas failed

[17] For further discussion on the cumulative effective of new millennium disenfranchising methods, see, Gilda R. Daniels, *A Vote Delayed is a Vote Denied: A Preemptive Approach to Eliminating Election Administration Legislation that Disenfranchises Unwanted Voters,* forthcoming in the University of Louisville Law Review, November 2008.

to send out absentee ballots in time for overseas voters to receive them. It's essential that the Department of Justice and the Federal Voting Assistance Program office at DOD set up an extensive monitoring program to survey and track the 3,000-plus counties around the country that are responsible for sending out these ballots and make sure that they send them out in time.

The FVAP office also needs to set up an extensive data matching service for election officials to check the mailing addresses of UOCAVA voters. They already do this to some extent, but they need an automated service that can handle large lists of voters and can send e-mails to service members, notifying them of the problem. The mail delay could be cut in half through H.R. 5673, that's the Military Voting Protection Act, which has been introduced in Congress and which would provide international express mail pick-up of overseas military ballots for return to the U.S.

Another problem we have are noncitizens, both illegal and legal residents, unlawfully registering and voting in our elections. Election officials have no systematic way of checking citizenship of registered voters, but there are enough reports of specific incidents, convictions and other cases from various States to leave no doubt that aliens are illegally participating in our election.

In 1985, the regional INS Director in Illinois testified that there were 25,000 illegal and 40,000 legal aliens registered in Chicago. Harris and Bexar County, Texas and Maricopa County, Arizona have recently found aliens registered and voting in their counties. And DOJ has convicted aliens in Alaska, Florida, D.C., and Colorado for violating Federal law and voting in Federal elections. Half of the 9/11 hijackers were registered to vote.

DHS has consistently refused to cooperate with local officials in checking the citizenship status of registered voters. This is a violation of 8 U.S.C. 1373, and it should be investigated by Congress.

Local and State election officials should be given access to the same electronic databases maintained by DHS, such as E-Verify, that are used by employers to check citizenship status of prospective employees. And the NVRA ought to be amended so that it requires District Court clerks and Federal courts to notify election officials when jurors summoned from voter registration lists are excused from jury duty because they are not citizens. That would be similar to section 8(g) of the NVRA, which already exists and which requires U.S. attorneys to notify local election officials when individuals are convicted of Federal felonies.

A number of States, such as Ohio, Iowa, South Dakota, are violating section 303(b) of HAVA. That's the provision that Congress added requiring individuals who register to answer a citizenship question. These States are registering individuals even when they leave the citizenship question blank.

Another problem is that State DMVs, in order to comply with NVRA, as they believe it, automatically offer voter registration to every individual who comes in for a driver's license without distinguishing between individuals who are coming in who are not U.S. citizens.

I would conclude by saying that while all of these are problems that need to be dealt with, overall we have an election process, I think, that we can be proud of and one that does strive to enfran-

chise all eligible Americans so they can vote. And it's something we should not lose sight of as we do continue to work to improve our democratic system.

Thanks.

[The articles submitted by Mr. von Spakovsky follows:]

ARTICLES SUBMITTED BY HANS A. VON SPAKOVSKY

Legal Memorandum

Published by The Heritage Foundation

No. 28
July 10, 2008

The Threat of Non-Citizen Voting

Hans A. von Spakovsky

In 2005, the U.S. Government Accountability Office found that up to 3 percent of the 30,000 individuals called for jury duty from voter registration rolls over a two-year period in just one U.S. district court were not U.S. citizens.[1] While that may not seem like many, just 3 percent of registered voters would have been more than enough to provide the winning presidential vote margin in Florida in 2000. Indeed, the Census Bureau estimates that there are over a million illegal aliens in Florida,[2] and the U.S. Department of Justice (DOJ) has prosecuted more non-citizen voting cases in Florida than in any other state.[3]

Florida is not unique. Thousands of non-citizens are registered to vote in some states, and tens if not hundreds of thousands in total may be present on the voter rolls nationwide. These numbers are significant: Local elections are often decided by only a handful of votes, and even national elections have likely been within the margin of the number of non-citizens illegally registered to vote.

Yet there is no reliable method to determine the number of non-citizens registered or actually voting because most laws to ensure that only citizens vote are ignored, are inadequate, or are systematically undermined by government officials. Those who ignore the implications of non-citizen registration and voting either are willfully blind to the problem or may actually favor this form of illegal voting.

Americans may disagree on many areas of immigration policy, but not on the basic principle that only citizens—and not non-citizens, whether legally

Talking Points

- There is significant evidence of non-citizen voting. The 2000 presidential election and many local elections have been decided within the margin of the number of non-citizens illegally registered to vote.
- The problem is multifaceted: Federal agencies refuse to give election officials information on voters' citizenship status; a failed "honor system" relies on non-citizens to comply with the law; federal laws have been implemented in ways that encourage non-citizens to register; and lax enforcement gives non-citizens strong incentives to obtain voter registration cards.
- The solutions, however, are straightforward: Anyone who registers to vote should be required to provide proof of citizenship; election officials should have access to E-Verify to help determine registrants' citizenship status; state DMVs should not allow non-citizens to register to vote; and courts should notify election officials when individuals summoned for jury duty from voter registration lists are excused for non-citizenship.

This paper, in its entirety, can be found at:
www.heritage.org/Research/LegalIssues/lm28.cfm

Produced by the Center for Legal and Judicial Studies

Published by The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002–4999
(202) 546-4400 • heritage.org

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

The Heritage Foundation
LEADERSHIP FOR AMERICA

present or not—should be able to vote in elections. Unless and until immigrants become citizens, they must respect the laws that bar non-citizen voting. To keep non-citizens from diluting citizens' votes, immigration and election officials must cooperate far more effectively than they have to date, and state and federal officials must increase their efforts to enforce the laws against non-citizen voting that are already on the books.

An Enduring Problem

Illegal voting by immigrants in America is nothing new. Almost as long as there have been elections, there have been Tammany Halls trying to game the ballot box. Well into the 20th century, the political machines asserted their ascendancy on Election Day, stealing elections in the boroughs of New York and the wards of Chicago. Quite regularly, Irish immigrants were lined up and counted in canvasses long before the term "citizen" ever applied to them—and today it is little different. Yet in the debates over what to do about the 8 million to 12 million illegal aliens estimated to be in the United States, there has been virtually no discussion of how to ensure that they (and millions of legal aliens) do not register and vote in elections.

Citizenship is and should be a basic requirement for voting. Citizenship is a legal requirement to vote in federal and state elections,[4] except for a small number of local elections in a few jurisdictions.[5]

Some Americans argue that alien voting is a non-existent problem or dismiss reported cases of non-citizen voting as unimportant because, they claim, there are no cases in which non-citizens "intentionally" registered to vote or voted "while knowing that they were ineligible."[6] Even if this latter claim were true—which it is not—every vote cast by a non-citizen, whether an illegal alien or a resident alien legally in the country, dilutes or cancels the vote of a citizen and thus disenfranchises him or her. To dismiss such stolen votes because the non-citizens supposedly did not know they were acting illegally when they cast a vote debases one of the most important rights of citizens.[7]

The evidence is indisputable that aliens, both legal and illegal, are registering and voting in federal, state, and local elections. Following a mayor's race in Compton, California, for example, aliens testified under oath in court that they voted in the election.[8] In that case, a candidate who was elected to the city council was permanently disqualified from holding public office in California for soliciting

1. GOV'T ACCOUNTABILITY OFFICE, ELECTIONS: ADDITIONAL DATA COULD HELP STATE AND LOCAL ELECTION OFFICIALS MAINTAIN ACCURATE VOTER REGISTRATION LISTS 42 (2005).
2. STEVEN CAMAROTA, CTR. FOR IMMIGR. STUD., IMMIGRANTS IN THE UNITED STATES, 2007: A PROFILE OF AMERICA'S FOREIGN-BORN POPULATION 31 (2007).
3. CRIM. DIV., PUB. INTEGRITY SECTION, U.S. DEP'T OF JUST., ELECTION FRAUD PROSECUTIONS & CONVICTIONS: OCTOBER 2002–SEPTEMBER 2005 (2006).
4. *See* U.S. DEPT. OF JUST., FEDERAL PROSECUTION OF ELECTION OFFENSES 66 (7th ed. 2007), *available at* http://www.justice.gov/criminal/pin/docs/electbook-0507.pdf; 18 U.S.C. § 611 (2008).
5. For example, non-citizens can vote in local elections in Chevy Chase and Takoma Park, Maryland. *See* Robert Redding, Jr., *Purging Illegal Aliens from Voter Rolls Not Easy; Maryland Thwarted in Tries So Far*, WASH. TIMES, Aug. 23, 2004.
6. JUSTIN LEVITT, BRENNAN CTR. FOR JUST., THE TRUTH ABOUT VOTER FRAUD 18 (2007), *available at* http://www.truthaboutfraud.org/pdf/TruthAboutVoterFraud.pdf.
7. Another problem not discussed in this paper is the inclusion by the Census of non-citizens, legal and illegal, in apportionment, which leads to the misallocation of congressional seats in the U.S. House of Representatives. This causes states such as Indiana, Michigan, Montana, Oklahoma, Pennsylvania, Wisconsin, Kentucky, and Mississippi to have one less seat than they should and states such as Texas, New York, California, and Florida to gain seats they would not have if only citizens were counted. This represents an obvious and clear Equal Protection problem—a violation of the principle of "one man, one vote"—since it takes fewer votes to be elected to Congress in districts with large numbers of non-citizens. *See* DUDLEY L. POSTON, JR., STEVEN A. CAMAROTA, & AMANDA K. BAUMLE, CTR. FOR IMMIGR. STUD., REMAKING THE POLITICAL LANDSCAPE: THE IMPACT OF ILLEGAL AND LEGAL IMMIGRATION ON CONGRESSIONAL APPORTIONMENT 1 (2003).
8. Daren Briscoe, *Non-citizens Testify They Voted in Compton Elections*, L.A. TIMES, Jan. 23, 2002, at B5.

non-citizens to register and vote.[9] The fact that non-citizens registered and voted in the election would never have been discovered except for the fact that it was a very close election and the incumbent mayor, who lost by less than 300 votes, contested it.[10]

Similarly, a 1996 congressional race in California may have been stolen by non-citizen voting.[11] Republican incumbent Bob Dornan was defending himself against a spirited challenger, Democrat Loretta Sanchez. Sanchez won the election by just 979 votes, and Dornan contested the election in the U.S. House of Representatives. His challenge was dismissed after an investigation by the House Committee on Oversight and Government Reform turned up only 624 invalid votes by non-citizens who were present in the U.S. Immigration and Naturalization Service (INS) database because they had applied for citizenship, as well as another 124 improper absentee ballots.[12] The investigation, however, could not detect *illegal* aliens, who were not in the INS records.

The Oversight Committee pointed out the elephant in the room: "[I]f there is a significant number of 'documented aliens,' aliens in INS records, on the Orange County voter registration rolls, how many illegal or undocumented aliens may be registered to vote in Orange County?"[13] There is a strong possibility that, with only about 200 votes determining the winner,[14] enough undetected aliens registered and voted to change the outcome of the election. This is particularly true since the California Secretary of State complained that the INS refused his request to check the entire Orange County voter registration file, and no complete check of all of the individuals who voted in the congressional race was ever made.[15]

The "Quick Ticket"

Non-citizen voting is likely growing at the same rate as the alien population in the United States; but because of deficiencies in state law and the failure of federal agencies to comply with federal law, there are almost no procedures in place that allow election officials to detect, deter, and prevent non-citizens from registering and voting. Instead, officials are largely dependent on an "honor system" that expects aliens to follow the law. There are numerous cases showing the failure of this honor system.

The frequent claim that illegal aliens do not register in order "to stay below the radar"[16] misses the fact that many aliens apparently believe that the potential benefit of registering far outweighs the chances of being caught and prosecuted. Many district attorneys will not prosecute what they see as a "victimless and non-violent" crime that is not a priority.[17]

On the benefit side of the equation, a voter registration card is an easily obtainable document—they

9. A judge's removal of the mayor from office was later overturned, but the removal of a councilwoman who participated in non-citizen voter fraud was upheld. *See* Bradley v. Perrodin, 106 Cal. App. 4th 1153 (2003), *review denied*, 2003 Cal. LEXIS 3586 (Cal. 2003); Robert Greene, *Court of Appeal Upholds Perrodin Victory Over Bradley in Compton*, METRO NEWS-ENTER., March 11, 2003; Daren Briscoe, Bob Pool & Nancy Wride, *Judge Voids Compton Vote, Reinstalls Defeated Mayor*, L.A TIMES, Feb. 9, 2002.

10. *Judge Voids Compton Vote, Reinstalls Defeated Mayor*, *supra* note 9.

11. *See* H.R. Doc. No. 105-416 (1998).

12. The Committee found "clear and convincing" evidence of 624 non-citizens voting but only "circumstantial" evidence of another 196 non-citizens voting. Thus, the Committee did not include the 196 in its tally of invalid votes. *Id.* at 15.

13. *Id.*

14. The margin is just 35 votes if one includes the 196 non-citizens found by the Committee based on "circumstantial" evidence.

15. Press Release, California Sec'y of State, Jones Releases Report on Orange County Voter Fraud Investigation (Feb. 3, 1998).

16. Richard Hasen, a professor at Loyola Law School, doubts that illegal aliens register to vote because "committing a felony for no personal gain is not a wise choice." Jessica Rocha, *Voter Rolls Risky for Aliens: Non-citizens' Registering Is a Crime; 4 Cases Turn up in N.C.*, NEWS & OBSERVER, Dec. 7, 2006.

17. GOV'T ACCOUNTABILITY OFFICE, *supra* note 1, at 60.

are routinely issued without any checking of identification—that an illegal alien can use for many different purposes, including obtaining a driver's license, qualifying for a job, and even voting.[18] The Immigration Reform and Control Act of 1986, for example, requires employers to verify that all newly hired employees present documentation verifying their identity and legal authorization to work in the United States.[19] In essence, this means that new employees have to present evidence that they are either U.S. citizens or legal aliens with a work permit. The federal I-9 form that employers must complete for all new employees provides a list of documentation that can be used to establish identity—including a voter registration card.[20]

How aliens view the importance of this benefit was illustrated by the work of a federal grand jury in 1984 that found large numbers of aliens registered to vote in Chicago. As the grand jury reported, many aliens "register to vote so that they can obtain documents identifying them as U.S. citizens" and have "used their voters' cards to obtain a myriad of benefits, from social security to jobs with the Defense Department."[21] The U.S. Attorney at the time estimated that there were at least 80,000 illegal aliens registered to vote in Chicago, and dozens were indicted and convicted for registering and voting.[22]

The grand jury's report resulted in a limited cleanup of the voter registration rolls in Chicago, but just one year later, INS District Director A. D. Moyer testified before a state legislative task force that 25,000 illegal and 40,000 legal aliens remained on the rolls in Chicago. Moyer told the Illinois Senate that non-citizens registered so they could get a voter registration card for identification, adding that the card was "a quick ticket into the unemployment compensation system."[23] An alien from Belize, for example, testified that he and his two sisters were able to register easily because they were not asked for any identification or proof of citizenship and lied about where they were born. After securing registration, he voted in Chicago.

Once such aliens are registered, of course, they receive the same encouragement to vote from campaigns' and parties' get-out-the-vote programs and advertisements that all other registered voters receive. Political actors have no way to distinguish between individuals who are properly registered and non-citizens who are illegally registered.

A Failure to Cooperate

Obtaining an accurate assessment of the size of this problem is difficult. There is no systematic review of voter registration rolls by states to find non-citizens, and the relevant federal agencies—in direct violation of federal law—refuse to cooperate with state election officials seeking to verify the citizenship status of registered voters. Federal immigration law requires these agencies to "respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information," regardless of any other provision of federal law, such as the Privacy Act.[24] However, examples of refusal to cooperate are legion:

- In declining to cooperate with a request by Maryland to check the citizenship status of individuals registered to vote there, a spokes-

18. In a typical example, voter registration cards are listed as an acceptable secondary source document to prove identity when obtaining a driver's license in Maryland. *See* Maryland Motor Vehicle Association, Sources of Proof, http://www.marylandmva.com/DriverServ/Apply/proof.htm (last visited July 7, 2008).

19. 8 U.S.C. § 1324a (2008).

20. U.S. Citizenship and Immigr. Serv., Form I-9, Employment Eligibility Verification, http://www.uscis.gov/files/form/i-9.pdf (last visited July 7, 2008).

21. *See* In Re Report of the Special January 1982 Grand Jury 1, No. 82 GJ 1909 (N.D. Ill. Dec. 14, 1984), at 8–9.

22. *See* Douglas Frantz, *Vote Fraud in City Outlined at Hearing*, CHI. TRIB., Sept. 20, 1983, at A1; HANS VON SPAKOVSKY, THE HERITAGE FOUNDATION, WHERE THERE'S SMOKE, THERE'S FIRE: 100,000 STOLEN VOTES IN CHICAGO (2008), *available at* http://www.heritage.org/Research/LegalIssues/lm23.cfm.

23. Desiree F. Hicks, *Foreigners Landing on Voter Rolls*, CHI. TRIB., Oct. 2, 1985.

The Heritage Foundation
LEADERSHIP FOR AMERICA

man for the U.S. Citizenship and Immigration Service (CIS) mistakenly declared that the agency could not release that information because "it is important to safeguard the confidentiality of each legal immigrant, especially in light of the federal Privacy Act and the Immigration and Nationality Act."[25]

- One surprising result of this policy: In 2004, a guilty verdict in a murder trial in Maryland was jeopardized because a non-citizen was discovered on the jury—which had been chosen from the voter rolls.[26]
- In 2005, Sam Reed, the Secretary of State of Washington, asked the CIS to check the immigration status of registered voters in Washington; the agency refused to cooperate.[27]
- A request from the Fulton County, Georgia, Board of Registration and Elections in 1998 to the old Immigration and Naturalization Service to check the immigration status of 775 registered voters was likewise refused for want of a notarized consent from each voter because of "federal privacy act" concerns.
- In 1997, the FBI and the U.S. Attorney's office in Dallas were investigating voting by non-citizens. They sent a computerized tape of the names of individuals who had voted to the INS requesting a check against INS records, but the INS refused to cooperate with the criminal investigation.[28] An INS official was quoted as saying that the INS bureaucracy did not "want to open a Pandora's Box.... If word got out that this is a substantial problem, it could tie up all sorts of manpower. There might be a few thousand [illegal voters] in Dallas, for example, but there could be tens of thousands in places like New York, Chicago or Miami."[29]

These incidents show that the CIS and U.S. Immigration and Customs Enforcement (ICE),[30] the successor agencies to the INS, are either ignorant of federal legal requirements or deliberately ignoring them. An inquiry by a state or local election official regarding voter eligibility based on citizenship falls squarely within their statutory authority.

To be sure, CIS and ICE databases are not comprehensive; they contain information only about legal immigrants who have applied for the documentation necessary to be in the United States and illegal immigrants who have been detained. But even access to that information

24. 8 U.S.C. §§ 1373(a), (c). Given the requirements of this statute, the initial refusal of the Justice Department and the INS to comply with "numerous requests from the Committee and California election officials to provide citizenship data on individuals" in the Dornan–Sanchez investigation was inexplicable; the Attorney General either made a basic legal error or decided, for political reasons, not to cooperate in an investigation that could have thrown out the Democratic winner of a congressional race. *See* H.R. Doc. No. 105-416, at 13 (1998).

25. Robert Redding, *Purging Illegal Aliens from Voter Rolls Not Easy; Maryland Thwarted in Tries So Far*, WASH. TIMES, Aug. 23, 2004.

26. *Id.*

27. *See* Letter of March 22, 2005, from Sam Reed to Robert S. Coleman, Director, Seattle District Office, USCIS (Mar. 22, 2005).

28. *INS Hampers Probe of Voting by Foreigners, Prosecutor Says*, HOUSTON CHRON., Sept. 20, 1997. The investigation was started when a random check by local INS agents found 10 non-citizens who had voted in just one 400-person precinct, and the case was eventually turned over to the local district attorney for prosecution. The government, however, refused to expand the probe to cover the full country as requested by the agents, who claimed that the probe was halted because of the supervisor's fear of the potential "political ramifications." *See* Frank Trejo, *Internal Strife Embroils Dallas INS Office—Local Agents' Whistle-Blowing Leads to Far-Flung Controversy*, DALLAS MORNING NEWS, March 8, 1998; Dena Bunis, *Dallas INS' Probe of Electorate Echoes Here: Fallout from the Dornan–Sanchez Inquiry Sparks an Internal INS Debate Over a Texas Computer-Match Investigation*, ORANGE COUNTY REG., June 5, 1997.

29. Ruth Larson, *Voter-Fraud Probe in Dallas Runs into INS Roadblock: Agency Denies It Should Have Further Aided U.S. Attorney*, WASH. TIMES, Sept. 25, 1997.

30. On March 1, 2003, the Immigration and Naturalization Service was split into two different divisions of the new Department of Homeland Security. USCIS is responsible for legal immigration and naturalization functions, while ICE is responsible for enforcing immigration and customs laws, including against illegal aliens.

would be a big step forward for election officials in their attempts to try to clean up registration lists and find those aliens who are illegally registered and voting in elections.

The Honor System

The refusal of federal agencies to obey the law compels local election officials to rely almost entirely on the "honor system" to keep non-citizens from the polls. As Maryland's state election administrator has complained, "There is no way of checking.... We have no access to any information about who is in the United States legally or otherwise."[31]

Most discoveries of non-citizens on the registration rolls are therefore accidental. Though the Department of Justice has no procedures in place for a systematic investigation of these types of criminal violations, in just a three year period, it prosecuted and convicted more than a dozen non-citizens who registered and voted in federal elections in Alaska, Florida, the District of Columbia, and Colorado.[32] Among them was an alien in southern Florida, Rafael Velasquez, who not only voted, but even ran for the state legislature.[33] Eight of the 19 September 11 hijackers were registered to vote in either Virginia or Florida—registrations that were probably obtained when they applied for driver's licenses.[34]

In 1994, Mario Aburto Martinez, a Mexican national and the assassin of Mexican presidential candidate Luis Donaldo Colosio, was found to have registered twice to vote in California.[35] A random sample of just 10 percent of the 3,000 Hispanics registered to vote in California's 39th Assembly District by an independent group "revealed phony addresses and large numbers of registrants who admitted they were not U.S. citizens."[36] This problem may be partially explained by the testimony of a Hispanic member of the Los Angeles Police Department who had been a volunteer for the California-based Southwest Voter Registration Education Project. When she reported to her supervisor that her fellow volunteers were not asking potential voters whether they were citizens, she was reprimanded "and told that she was not to ask that question...only whether the person wished to register to vote."[37] Similarly, the Dornan–Sanchez investigation produced an affidavit from a non-citizen stating that the Sanchez campaign's field director, an elected member of the Anaheim Board of Education, told him that it "didn't matter" that he was not a U.S. citizen—he should register and vote anyway.[38]

In 2006, Paul Bettencourt, Voter Registrar for Harris County, Texas, testified before the U.S. Committee on House Administration that the extent of illegal voting by foreign citizens in Harris County was impossible to determine but "that it has and will continue to occur." Twenty-two percent of county residents, he explained, were born outside of the United States, and more than 500,000 were non-citizens. Bettencourt noted that he cancelled the registration of a Brazilian citizen in 1996 after she acknowledged on a jury summons that she was not a U.S. citizen. Despite that cancellation, however, "She then reapplied in 1997, again claiming to be a U.S. citizen, and was again given a voter card, which was again cancelled. Records show she was able to vote at least four times in general and primary elections."[39]

In 2005, Bettencourt's office turned up at least 35 cases in which foreign nationals applied for or

31. Christina Bellantoni, *Little to Stop Illegal Aliens from Voting*, WASH. TIMES, Sept. 24, 2004, at A1.

32. CRIMINAL DIV., *supra* note 3.

33. *Id.*

34. JOHN FUND, STEALING ELECTIONS: HOW VOTER FRAUD THREATENS OUR DEMOCRACY 1 (2004); *see also* Kathleen Hunter, *States Slow to Give Driver's Licenses to Illegal Aliens*, Stateline.org, July 1, 2004.

35. Karen Saranita, *The Motor Voter Myth*, NAT'L REV., Nov. 11, 1996, at 42.

36. *Id.*

37. *Id.*

38. Affidavit of Nelson Molina, H.R. Doc. No. 105-416, at 181 (1998). Molina's wife was in the meeting with the field director and filed a supporting affidavit.

received voter cards, and he pointed out that Harris County regularly had "elections decided by one, two, or just a handful of votes." In fact, a Norwegian citizen was discovered to have voted in a state legislative race in Harris County that was decided by only 33 votes.[40] Nor is this problem unique to Harris County. Recent reports indicate that hundreds of illegal aliens registered to vote in Bexar County, Texas, and that at least 41 of them have voted, some several times, in a dozen local, state, and federal elections.[41]

In 2005, Arizona passed Proposition 200, which requires anyone registering to vote to provide "satisfactory evidence of United States citizenship," such as a driver's license, a birth certificate, a passport, naturalization documents, or any other documents accepted by the federal government to prove citizenship for employment purposes. The state issues a "Type F" driver's license to individuals who are legally present in the United States but are not citizens. Since Proposition 200 took effect, 2,177 non-citizens applying for such licenses have attempted to register to vote.[42] Another 30,000 have been denied registration because they could not produce evidence of citizenship.[43]

The constitutionality of Arizona's requirement is currently being litigated in federal court. The district court hearing the case refused to issue a preliminary injunction against enforcement of the law; and the Supreme Court vacated a preliminary injunction issued by the Ninth Circuit Court of Appeals.[44] Trial is scheduled for July 2008.[45] The plaintiffs will have to convince the presiding judge that the very same proof of citizenship required by the federal government before an individual can work is somehow unlawful when imposed by a state before a person can vote.

Some non-citizen registrations can be detected through the jury process. The vast majority of state and federal courts draw their jury pools from voter registration lists, and the jury questionnaires used by court clerks ask potential jurors whether they are U.S. citizens. In most states, however, and throughout the federal court system, court clerks rarely notify local election officials that potential jurors have sworn under oath that they are not U.S. citizens. In jurisdictions that share that information, election officials routinely discover non-citizens on the voter rolls. For example, the district attorney in Maricopa County, Arizona, testified that after receiving a list of potential jurors who admitted they were not citizens, he indicted 10 who had registered to vote. (All had sworn on their registration forms that they were U.S. citizens.) Four had actually voted in elections. The district attorney was investigating 149 other cases.[46]

The county recorder in Maricopa County had also received inquiries from aliens seeking verification, for their citizenship applications, that they had not registered or voted. Thirty-seven of those aliens had registered to vote, and 15 of them had actually voted. As the county's district attorney explained, these numbers come "from a relatively small universe of individuals—legal immigrants who seek to become citizens.... These numbers do not tell us how many illegal immigrants have regis-

39. *Non-Citizen Voting and ID Requirements in U.S. Elections: Hearing Before the Committee on House Administration*, 109th Cong. (2006) (statement of Paul Bettencourt, Harris County Tax Assessor-Collector and Voter Registrar).

40. Joe Stinebaker, *Loophole Lets Foreigners Illegally Vote; 'Honor System' in Applying Means the County Can't Easily Track Fraud*, HOUSTON CHRON., Jan. 16, 2005.

41. Guillermo Garcia, *Voter Fraud Case Takes a New Twist*, EXPRESS-NEWS, Sept. 12, 2007; Jim Forsyth, *Hundreds of Non Citizens Have Registered to Vote in Bexar County*, 1200 WOAI, May 16, 2007.

42. Interview with Kevin Tyne, Deputy Sec'y of the State of Arizona (May 27, 2008).

43. *AZ to Seek Dismissal of Challenge to Voter ID Law*, KTAR 92.9 FM, May 26, 2008.

44. *See* Purcell v. Gonzalez, 549 U.S. 1, 3 (2006).

45. *AZ to Seek Dismissal of Challenge to Voter ID Law*, *supra* note 43.

46. *Securing the Vote: Arizona: Hearing Before the Committee on House Administration*, 109th Cong. (2006) (statement of Andrew P. Thomas, Maricopa County District Attorney); *see also* Transcript of Southwest Conference on Illegal Immigration, Border Security and Crime, May 16, 2006.

tered and voted."[47] Even these small numbers, though, could have been enough to sway an election. A 2004 Arizona primary election, explained the district attorney, was determined by just 13 votes. Clearly, non-citizens who illegally registered and voted in Maricopa County could have determined the outcome of the election.[48]

These numbers become more alarming when one considers that only a very small percentage of registered voters are called for jury duty in most jurisdictions. The California Secretary of State reported in 1998 that 2,000 to 3,000 of the individuals summoned for jury duty in Orange County each month claimed an exemption from jury service because they were not U.S. citizens, and 85 percent to 90 percent of those individuals were summoned from the voter registration list, rather than Department of Motor Vehicles (DMV) records.[49] While some of those individuals may have simply committed perjury to avoid jury service, this represents a significant number of potentially illegal voters: 20,400 to 30,600 non-citizens summoned from the voter registration list over a one-year period.

Helping Aliens Vote

Under the Constitution, an individual's eligibility to vote is left mostly to the states. Article I and the 17th Amendment provide that the electors for Members of Congress shall have the qualifications for electors of the most numerous branch of the state legislatures.[50] Article II provides that presidential electors shall be chosen in the manner directed by state legislatures.[51] All of the states require voters to be U.S. citizens to vote in state elections,[52] and 18 U.S.C. § 611 makes it a crime for "any alien to vote in any election held solely or in part for the purpose of electing a candidate for the office of President, Vice President, Presidential elector," or Congress.[53]

Other federal laws authorize the Justice Department to prosecute non-citizens for registering and voting in elections. The National Voter Registration Act of 1993 (NVRA) requires individuals registering to vote to affirm eligibility requirements, including citizenship.[54] The Help America Vote Act of 2002 (HAVA) added a specific citizenship question to the federal voter registration form.[55] Since citizenship is clearly material to a voter's eligibility, aliens can be prosecuted for providing false registration information and voting under the NVRA.[56] They can also be prosecuted under 18 U.S.C. § 1015(f), which criminalizes making a false statement or claim about citizenship "in order to register to vote or to vote in any Federal, State, or local election (including an initiative, recall, or referendum)," and under 18 U.S.C. § 911, which prohibits making a false claim of citizenship.

The NVRA has contributed to the problem of aliens registering to vote. The largest source of voter registrations are state programs created under Section 5 of the NVRA, known as "Motor Voter," which requires all states to allow individuals who apply for a driver's license to register to vote at the same time.[57] States such as Maryland, Hawaii, Maine, Michigan, New Mexico, Oregon, Utah, and Washington allow illegal aliens to obtain driver's

47. *Id.*

48. *Id.*

49. Press Release, California Sec'y of State, Official Status Report on Orange County Voter Fraud Investigation (Feb. 3, 1998).

50. U.S. CONST., art. I, § 2, amend. XVII.

51. U.S. CONST., art. II, § 1, cl. 2.

52. *See* U.S. DEPT OF JUST., *supra* note 4, at 66.

53. An exception exists if the election is held partly for some other purpose, the alien is authorized to vote for such other purpose under a state or local law, and that voting is conducted "independently of voting" for candidates for federal offices. 18 U.S.C. § 611 (2008).

54. 42 U.S.C. §§ 1973gg-3(c)(2)(C), 1973gg-3(a)(6)(A)(i), 1973gg-7(b)(2) (2008).

55. 42 U.S.C. § 15483(b)(4)(A)(i) (2008).

56. 42 U.S.C. § 1973gg-10(2) (2008).

57. 42 U.S.C. § 1973gg-3 (2008).

licenses, and other states, such as Tennessee, provide licenses to resident aliens.[58]

To comply with Motor Voter, states automatically offer voter registration to all applicants for a driver's license. Most government employees do so even when they know the applicants are not citizens because these employees do not want to face claims that they discriminated based on ethnicity, and they believe it is the responsibility of election officials, not state DMVs, to determine the eligibility of voter registration applicants. Yet when license bureaus submit completed registration forms to state election officials, they often omit the citizenship status of the applicants.

Savvy politicians may already have taken advantage of this state of affairs. During the Clinton Administration, for example, the Justice Department allegedly forced states to offer voter registration to non-citizens. In response, the Texas Secretary of State reportedly asked his attorney general to sue the department.[59]

Confusion still reigns in the states. In 2004, a Maryland state legislator contacted the DOJ to express his concern that the Maryland Department of Motor Vehicles was allowing non-citizens applying for driver's licenses to register to vote. When he asked the DMV to stop, he was told that it was required by the NVRA to offer all driver's license applicants the opportunity to register to vote. The Justice Department quickly sent the Maryland delegate a letter pointing out that the NVRA had no such requirement and that federal law makes it a crime for a non-citizen to register. The letter went on to say that a state that issues licenses to non-citizens should not offer such an individual the right to register to vote.[60] Nonetheless, there is no evidence that the Maryland DMV has changed its procedures to deter non-citizens from registering, and Maryland officials recently testified that they were issuing 2,000 driver's licenses per week to undocumented aliens.[61]

Utah, which issues licenses to illegal aliens, switched to a two-tiered system that issues a visibly different "driving privilege" card to illegal aliens after a limited 2005 audit by the state's Legislative Auditor General. The audit found that hundreds of illegal aliens had registered to vote when they obtained their Utah driver's licenses—and at least 14 of them had voted.[62] The audit used a small sample; Utah State Senator Mark Madsen said that an extrapolation of the audit numbers suggested that 5,000 to 7,000 aliens were registered to vote.[63]

This problem has been exacerbated by many states' interpretation of a HAVA provision that requires a citizenship question on the federal mail-in voter registration form. The provision, in 42 U.S.C. § 15483, requires the following question: "Are you a citizen of the United States of America?" If an applicant fails to answer this question, HAVA provides that the local election official must notify the applicant of the failure and "provide the applicant with an opportunity to complete the form in a timely manner to allow for the completion of the registration form" prior to the election.[64] Under the threat of lawsuits by organizations like the American Civil Liberties Union, states such as Ohio,

58. Daniel Vock, *Tighter License Rules Hit Illegal Immigrants*, Stateline.org, Aug. 24, 2007; Kathleen Hunter, *States Slow to Give Driver's Licenses to Illegal Aliens*, Stateline.org, July 1, 2004.

59. Juan Elizondo, Jr., *Agency Accused of Misusing Law*, AUSTIN AM.-STATESMAN, June 27, 1997.

60. Letter from Joseph D. Rich, Chief, Voting Section, Civ. Rts. Div., U.S. Dep't of Just., to Donald H. Dwyer, Jr. (Aug. 24, 2004), *available at* http://www.usdoj.gov/crt/voting/hava/MD_ltr2.htm. In my discussions with election officials when I was at the Justice Department, it seemed that they were very concerned about being sued by the Department of Justice under the NVRA for not fully complying with the driver's license voter registration provisions. Most state officials found it easier and less risky to register all driver's license applicants regardless of their citizenship status.

61. Interview with Don Dwyer, Maryland Delegate (June 23, 2008).

62. Off. of the Legis. Auditor Gen., State of Utah, ILR 2005-B, February 8, 2005; Deborah Bulkeley, *State Says 14 Illegals May Have Cast Ballots*, DESERET MORNING NEWS, Aug. 8, 2005. At least 20 of the registered voters were under deportation orders.

63. *Bill Would Change Voter Registration Rolls*, Associated Press, Feb. 7, 2006.

64. 42 U.S.C. § 15483(b)(4)(A) (2008).

Iowa, and South Dakota will register an individual even if he fails to answer the citizenship question. The Justice Department so far has failed to sue these states to force compliance with HAVA.[65]

HAVA also imposes an identification requirement for first-time voters who register by mail.[66] Many states, including California, have interpreted this provision to apply only to registration forms received through the U.S. mail, so the requirement is easily avoided by turning in the registration form directly to election officials. Additionally, documents named in the law as acceptable forms of identification for voter registration, such as utility bills and bank statements, are easily obtained by non-citizens. HAVA also requires applicants to provide a driver's license number or the last four digits of their Social Security number but allows an individual to register even if he has neither number.[67]

Practical Solutions

There are several changes that states and the federal government can and should make to prevent non-citizens from registering and voting illegally in state and federal elections:

- Congress and state legislatures should require all federal and state courts to notify local election officials when individuals summoned for jury duty from voter registration rolls are excused because they are not United States citizens. United States Attorneys are already under a similar obligation: Under the NVRA, they must send information on felony convictions to local election officials so that the felons can be removed from voter registration rolls.[68]
- All states should require anyone who registers to vote to provide proof of U.S. citizenship. This requirement should be identical to the federal requirement of proof for employment.
- ICE and CIS should comply with federal law and confirm the citizenship status of registered voters when they receive requests for such information from state and local election officials. If the agencies decline to do so, they should be investigated by Congress and the Inspector General of the Department of Homeland Security (DHS) for their failure to follow the law.
- The database, known as E-Verify, that is being used by U.S. employers to check the citizenship status of prospective employees should be made available to election officials and administrators of the statewide registration databases required by HAVA so that election officials can run database comparisons to identify registered voters who are not citizens.
- The DOJ should file enforcement actions against all states that allow an individual to register to vote when he or she has not answered the citizenship question on the voter registration form required by HAVA.
- Local district attorneys must be made to realize that registration and voting by non-citizens are offenses against the basic principles of our democratic system and that such cases must be prosecuted. CIS and ICE should also realize that all information they have on non-citizen voting—such as when immigrants applying for citizenship admit they have registered and voted or when illegal aliens who are detained are found to possess voter registration cards or other documents indicating they are registered to vote—must be referred to the DHS for institution of removal proceedings, to the DOJ for prosecution, and to the relevant election officials so that the individual can be struck from the registration rolls.
- The DOJ should conduct a survey of all state DMVs to determine which ones have rules and procedures in place that prevent non-citizens who apply for driver's licenses from registering to vote and then file enforcement actions

65. See Ohio Sec'y of State, Directive No. 2004-31, Sept. 7, 2004; Letter from Chris Nelson, South Dakota Sec'y of State, to County Auditors (Oct. 25, 2004); Letter from Thomas J. Miller, Iowa Att'y Gen., to Chester J. Culver, Iowa Sec'y of State (Oct. 20, 2004).

66. 42 U.S.C. § 15483(b) (2008).

67. 42 U.S.C. § 15483(a)(5) (2008).

68. 42 U.S.C. § 1973gg-6(g) (2008).

against any state that refuses to comply with this requirement.

- A voter registration card should not be a valid identifying document to obtain a driver's license or employment.

Conclusion

America has always been a nation of immigrants, and we remain today the most welcoming nation in the world. Newly minted citizens assimilate and become part of the American culture very quickly. Requiring that our laws—*all* of our laws—be complied with requires no more of an alien than it does of a citizen. It is a violation of both state and federal law for immigrants who are not citizens to vote in state and federal elections. These violations effectively disenfranchise legitimate voters whose votes are diluted, and they must be curtailed.

Election officials have an obligation not only to enforce those laws, but also to implement registration and election procedures that do not allow those laws to be bypassed or ignored. Anything less encourages contempt for the law and our election process. Lax enforcement of election laws permits individuals who have not entered the American social compact or made a commitment to the U.S. Constitution, U.S. laws, and the U.S. cultural and political heritage to participate in elections and potentially change the outcome of closely contested races that affect how all Americans are governed.

—Hans A. von Spakovsky served as a member of the Federal Election Commission for two years. Before that, he was Counsel to the Assistant Attorney General for Civil Rights at the U.S. Department of Justice, where he specialized in voting and election issues. He also served as a county election official in Georgia for five years as a member of the Fulton County Board of Registration and Elections.

National Review Online

July 10, 2008, 4:00 a.m.

Illegal Voting
The non-citizen electorate.

By Hans A. von Spakovsky

Amid all the talk of new voters becoming involved in the election, hopefully one group of voters will not vote in November — non-citizens, many of whom are illegally registered to vote all over the country, particularly in the southwest. Although there is no reliable method to determine the exact number registered aliens, there is evidence that this is a significant and growing problem.

The Government Accountability Office estimated that up to 3 percent of individuals called for jury duty from voter registration rolls in just one U.S. district court were not U.S. citizens. While that may not seem like a large number, it's more than enough to tip close elections — say, Florida in 2000.. Florida has over a million illegal aliens, and the Justice Department has prosecuted non-citizens, including a state-legislature candidate, for voting there. In California, a congressional seat came within 200 votes of being stolen in 1996 by non-citizens' voting; a city councilmember was permanently disqualified from public office for soliciting non-citizens to vote in Compton in 2001.

After a grand-jury investigation of the 1982 Illinois governor's race resulted in the conviction of aliens for illegally registering and voting, the U.S. Attorney estimated that there were 80,000 non-citizens registered to vote in Chicago. In 1985, the district director of the Immigration and Naturalization Services testified in the Illinois legislature that 25,000 illegal and 40,000 legal aliens remained registered in Chicago. The grand jury found that aliens registered so they could "obtain documents identifying them as U.S. citizens" and had used their voter registration cards "to obtain a myriad of benefits, from social security to jobs with the Defense Department." More recently, Bexar County, Texas, found hundreds of aliens registered to vote, some of whom had voted in a dozen local, state, and federal elections, and Harris County found a Norwegian citizen who had voted in a state legislative race decided by only 33 votes. Similar accounts from other states such as Utah and Arizona demonstrate that this is a widespread phenomena.

The weaknesses of the current registration system are to blame. First, in order to make registration easier, federal laws do not require proof of citizenship when registering, and states routinely offer registration to anyone getting a driver's license, regardless of citizenship. Moreover, federal agencies in charge of immigration and customs enforcement refuse to comply with a federal law that requires them to cooperate with election officials in checking the citizenship status

of registered voters. Overall, this amounts to an "honor" system — expecting immigrants, including those who broke the law to come here, to obey the law.

And even if an illegal alien would normally follow the rules, federal law provides an *incentive* for him to register to vote: Voter-registration cards, obtainable after a limited or no identification check, can be used to verify legal work status. They can also help when it comes to drivers' licenses.

There are a number of solutions to this problem. The most important is that we must stop relying on an honor system, and require voters to provide proof of citizenship; election officials should have access to the government databases used by employers to verify the citizenship status of prospective employees. The federal government already uses these tools on everyone trying to get a job, negating the argument that proof of citizenship is discriminatory. Arizona, the only state that requires proof of citizenship to register to vote, has already turned away thousands of non-citizens who attempted to register — including almost 3,000 who tried to register when they applied for drivers' licenses. State and federal courts should notify election officials when potential jurors are excused because they are not U.S. citizens.

Americans may disagree on many areas of immigration policy, but they should not disagree on the basic principle that only citizens should vote. Government officials have an obligation to enforce those laws.

— Hans A. von Spakovsky served as a member of the Federal Election Commission and as counsel to the assistant attorney general for civil rights at the U.S. Department of Justice. His new study on "The Threat of Non-Citizen Voting" is available at www.heritage.org.

the weekly Standard

Disenfranchised Over There
Let's defend the voting rights of those who defend us.
by Hans A. von Spakovsky & Roman Buhler
05/12/2008, Volume 013, Issue 33

Over the past 40 years, starting with the historic Voting Rights Act of 1965, Congress has sought to guarantee the right of every American citizen to vote. But there is still a large and significant group of Americans who are needlessly disenfranchised: the millions of men and women who serve abroad in our armed forces.

A survey by the Election Assistance Commission shows that of almost 1 million ballots requested in the last election by overseas and military voters, only about one third were successfully cast and counted. The most common reasons for this failure were that the requested ballots sent to voters were returned as "undeliverable" and that marked ballots were received too late to be counted.

Military personnel based outside the United States are still dependent on the mail to receive and cast their ballots. When an election official sends a ballot overseas, it can take three weeks (or more) to reach a soldier in Iraq or a sailor on a ship halfway around the world. Even if the soldier or sailor completes the ballot immediately, it may take another three weeks to get back. Many ballots simply do not get home in time.

The Pentagon spent millions on a high-tech solution that transmitted ballots over the Internet, but abandoned the effort because of serious security risks. Some states now allow completed ballots to be faxed to election officials from overseas voters, but many soldiers in the field don't have access to fax machines, and faxing ballots imperils the secrecy of the vote. Some states also allow ballots postmarked overseas before the date of the election to be received, unlike all other ballots, after the close of polls. Unfortunately, given the unreliability of some overseas postal authorities, this poses significant risk of fraudulently postmarked ballots, especially in a very close election.

Republican congressman Kevin McCarthy has just introduced the Military Voting Protection Act, which would require the Pentagon to collect absentee ballots

overseas and deliver them stateside by express air transport. This could shorten the delivery time for overseas ballots from three weeks to only four days. It would mean that many thousands of ballots that were rejected in 2004 would count in 2008.

A more comprehensive solution, though, could be crafted from the historical example of the first absentee ballots cast by American soldiers. The election of 1864 was held in the middle of a civil war when large numbers of voters were fighting in the field. Wisconsin decided to allow its soldiers to vote absentee, and other states quickly followed suit. Rather than a slow and cumbersome ballot-by-mail process, the states simply set up polling sites in the field encampments of their soldiers. This was easier to do in 1864 when soldiers in many military units came from only one state or community. But modern technology should be able to overcome any obstacles today.

Imagine a system where Congress and the states coordinated an effort to set up early voting sites at or near military installations all over the world. Once a voter provides proper identification that matches his or her name on the voter registration lists each state is required to maintain by the Help America Vote Act of 2002, an electronically uploaded ballot provided by that state could be printed out for the soldier. The ballots completed at each overseas early voting site could then be sent back to the appropriate election officials in the United States through express mail.

Except in extraordinary circumstances such as special forces teams in the field or sailors on ships far out at sea, ballots completed by the Friday before the election could be in the hands of local election officials by the close of polling on Election Day. Early voting sites and an express mail delivery system would enfranchise hundreds of thousands of military voters who today never get their vote counted.

And while establishing overseas early voting sites would take time, a system for express delivery of completed ballots from military bases and U.S. consulates could be implemented in 2008, if Congress and the president worked together. Surely, improving the voting rights of our men and women in uniform is a strong enough motivation.

Dwight Eisenhower, a general who went on to become president, once said that "the future of this republic is in the hands of the American voter." Those hands should include all of those who protect and defend this nation and fight to keep it free.

Hans A. von Spakovsky is a former commissioner on the Federal Election Commission. Roman Buhler is a former elections counsel for the House Administration Committee.

© Copyright 2008, News Corporation, Weekly Standard, All Rights Reserved.

Mr. NADLER. Thank you. Mr. Hebert is recognized for 5 minutes.

TESTIMONY OF J. GERALD HEBERT, EXECUTIVE DIRECTOR AND DIRECTOR OF LITIGATION, THE CAMPAIGN LEGAL CENTER

Mr. HEBERT. Chairman Nadler, Ranking Member Franks, and Members of the Committee, thank you again for the invitation and opportunity to appear before the Subcommittee today and discuss lessons learned from 2004. I have a number of topics to try to cover in my 5 minutes.

First, the continuing problem that we have and we see today of States implementing purges indiscriminately of statewide voter registration rolls. States were obligated by the Help America Vote Act of 2002, HAVA for short, to establish a statewide computerized voter registration list. To verify the accuracy of the data HAVA requires State officials to match information in that database with either data from the DMV or data from the Social Security Administration.

Now, one of the most significant challenges that States face is trying to do this match. In addition, of course the data entry errors, slight differences in data sets, inclusion of a middle initial, use of a maiden name, hyphenated names, and so on, it results in a large number of mismatched records. And consequently there is a real danger that on election day in 2008 some people may go thinking that they've registered to vote and in fact due to the mismatch they will find out that they aren't registered to vote.

It's important to note, and I think this is the key, that HAVA does not require that voters be denied registration and the right to cast a ballot if there hasn't been a successful match of those databases.

The matching provision of HAVA relates to internal recordkeeping of the States. It's not intended to penalize voters when the State can't match up the information in the database. Ironically, the tendency of some States toward purging voter rolls when there's a mismatch in the databases originated in part from the Civil Rights Division of the Justice Department of all places, the unit charged with enforcing election laws.

Back in 2003, when Mr. von Spakovsky worked in the Justice Department, he issued an opinion letter to the State of Maryland and he said that Congress obviously intended that when the results—and I'm quoting here—the results indicate the registrant is not eligible, has provided inaccurate or fraudulent information or information cannot be verified, then the application must be denied.

I believe this interpretation is not only incorrect, and the Department of Justice has rescinded it of course since then; it is also inconsistent with the whole purposes of the Help America Vote Act. After all the statute is called the Help America Vote Act, not help make the States Make It More Difficult for Americans to Vote Act. So States would be wise not to purge, purge voters due to mismatching, and likewise should not use HAVA as an excuse for requiring voters who are unable to be matched in the State's database to cast some kind of a provisional ballot.

While I'm talking about HAVA, let me add HAVA's voter ID requirements are perhaps the most easily misunderstood and misapplied by election officials. HAVA requires—and we saw this all the time when we were here talking about voter ID—HAVA requires that those voters who go to vote for the first time and who registered by mail must produce an ID in order to vote. That's it. And it's not a photo ID, as Ms. Mitchell says, it is not a government issued ID, there are all kinds of forms of identification available.

Now here's one of the problems we're seeing with voter ID laws. What we see in New Mexico, for example, in 2006 a recent study showed that if you were Latino and you went to the polls to vote, you were more likely to be required to produce an ID than if you were an Anglo. And Asian Americans report those same kinds of problems on election day.

So I think it's extremely important that local election officials and State election officials be notified by the Justice Department, Chairman Conyers, as you pointed out where are they today, that they can't enforce voter ID laws if they have them on the books in a discriminatory way. If everybody—if there is a voter ID requirement, everybody should be required to produce it. If there isn't one, then they shouldn't be required to produce one at all.

Now, let me finish on one final topic and that is where is the Justice Department today? Twenty-one years I devoted of my career to the Justice Department, and I think one of the biggest differences today is the fact that fortunately we don't have a lot of partisan election officials in the Justice Department today that you saw in 2004, people who tried to advance a partisan agenda instead of enforcing even-handedly the voting rights laws.

Let me just say that the steps the Department can take to ensure that voting is done in an even-handed way and not pursued in a partisan manner, they should assign monitors and Federal poll watchers only to those places where there is evidence of a possible civil rights violation or as part of an ongoing investigation of election practices.

Another lesson learned from widespread—widespread public suspicion that political reasons actually motivated the placement of Federal poll watchers and Federal attorneys in 2004 is the following: The Department of Justice when it announces locations where they are going to deploy Federal observers should make it public in a general way that civil rights concerns underlie their decisions, and it should emphasize that the Department's Criminal Division has a longstanding policy of not monitoring for election fraud purposes and indeed does not conduct such investigations until after an election so they won't run the risk of being accused of trying to interfere with it.

Finally, let me just say that little came out recently at the Civil Rights Division and Criminal Division voting symposium at the Justice Department for their plans for monitoring this year's elections. Congress should insist that everyone from Attorney General Mukasey down to Civil Rights Division, Acting Assistant Attorney General Grace Chung Becker, down to the Voting Section Chief, Christopher Coates, explain in detail their plans to monitor elections in the months ahead. And they should be required in advance

of the elections to follow up with more detailed information when we get closer to it. Given the level of politicization at the Justice Department, that is the least that we should insist upon.

Thank you again for the opportunity to testify.

[The prepared statement of Mr. Hebert follows:]

PREPARED STATEMENT OF J. GERALD HEBERT

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES

Lessons Learned From the 2004 Presidential Elections.

July 24, 2008

STATEMENT OF J. GERALD HEBERT

Executive Director & Director of Litigation
The Campaign Legal Center
1640 Rhode Island, Ave., NW Suite 650
Washington, DC 20036
(202) 736-2200

Chairman Nadler, and Ranking member, thank you for the invitation and opportunity to appear before this Subcommittee today to discuss the lessons learned from the 2004 Presidential elections. I would like to touch on several topics this afternoon.

But before I do, let me say at the outset that in general, and largely as a result of the experiences from the 2000 Presidential election and the decision in *Bush v. Gore*, our nation is much more informed today about what can go wrong with elections than perhaps at any time in our history. As a former Department of Justice prosecutor in the Voting Section of the Civil Rights Division who now practices in the area of election law, and has taught voting rights and election law at three law schools during the last 15 years, I can assure you that there is much more available information about the conduct of elections than ever before. Congress's enactment of the Help America Vote Act (HAVA) with its various mandates to the states, and the establishment of the Election Administration Commission (EAC), have helped ensure that a public record is available for those who want to study how we conduct our elections and to propose fixes when they are needed. Unfortunately, despite extensive data and information, the administration of our elections has not improved as much as many of us hoped they would when the HAVA was enacted six years ago.

I plan to discuss today the following areas of concern: 1) the continuing problem of states' indiscriminate purges of statewide voter rolls; 2) the continuing problem of election officials imposing voter ID requirements under the erroneous belief that HAVA requires them to do so, and often in a discriminatory manner; 3) the disproportionate allocation of voting machines such that heavily populated polling places lack sufficient voting equipment, resulting in long delays and some voters leaving the poll site without

casting ballots; and 4) the ongoing threat of vote caging, an illegal voter suppression technique used to keep minorities (mostly blacks) from voting; and 5) the role that DOJ will play in the upcoming elections.

Purging of Voters and the Creation of Statewide Voter Lists

States were obligated by HAVA to establish a computerized statewide voter registration list by January 1, 2004 (or January 1, 2006 if the state received a waiver). Previously, voter registration data was compiled and maintained at the local level. HAVA now requires that a computerized voter registration list be defined and administered at the State level, that it contain the name and registration information of every legally registered voter in the State, that it assign a unique identifier to each legally registered voter in the State, and that it be immediately and electronically accessible to all State and local election officials. 42 U.S.C. § 15483(a)(1)(A). HAVA further specifies that this computerized registration list "shall serve as the official voter registration list for the conduct of all elections for Federal office in the State," and that the list be continuously and accurately updated such that "only voters who are not registered or who are not eligible to vote are removed from the computerized list." 42 U.S.C. § 15483(a)(1)(A)(viii); 42 U.S.C. § 15483(a)(2)(B)(ii). Finally, HAVA's minimum standards for accuracy require that the State election system include "[s]afeguards to ensure that eligible voters are not removed in error from the official list of eligible voters." 42 U.S.C. § 15483(a)(3)(B). To verify the accuracy of voter registration data, HAVA requires State officials to match information in the statewide voter registration system with DMV or Social Security Administration databases. 42 U.S.C. § 15483(a)(5).

One of the largest potential problems on Election Day 2008 may result from inadequate or improper implementation of computerized voter registration lists in each State.

As one might expect, the extent to which the States have been able to successfully develop and implement computerized statewide voter registration lists has varied greatly across the country. In 2006, the Department of Justice sued New York, Alabama, New Jersey, and Maine for failing to implement statewide lists.[1] The Justice Department has since reached agreements with those states, most in the form of requiring the creation of an interim database.[2] California agreed to update its existing system in order to avoid being sued by the Justice Department. Records indicate that states such as Iowa and South Carolina currently have statewide computerized voter registration systems in use, but many other states are still behind schedule, and it is unclear whether they will be able to resolve problems with their election administration systems before November.[3]

One of the most significant challenges that States have encountered while implementing HAVA has been matching voter registration data to DMV and social security records. In addition to data entry errors, slight differences between data sets – such as the inclusion or exclusion of a middle initial, a changed last name as a result of a marriage or divorce, or minor differences in spacing or hyphenation of names – have resulted in a large number of mismatches between records, and consequently, there is a real danger that, come Election Day 2008, many registered voters will show up at the polls only to find that their names have been inadvertently purged from the statewide registration list. It is important to note, however, that HAVA "does not require that

[1] http://www.commondreams.org/headlines06/1026-01.htm
[2] http://www.commondreams.org/headlines06/1026-01.htm
[3] State-by-state breakdown of implementation of HAVA statewide voter registration lists: http://www.pewcenteronthestates.org/uploadedFiles/voter%20reg%20db%20status.pdf

voters be denied registration (and a regular ballot) if there is no successful match."[4] The matching provision relates to internal recordkeeping and was not "intended to penalize voters when the state cannot match the information on their application."

The tendency of some states toward purging the rolls when there is a mismatch in the databases appears to have been helped along, in part, by the U.S. Department of Justice's Civil Rights Division, the unit charged with enforcing federal election laws. Back in 2003, Hans von Spakovsky, then one of the Division's lawyers, wrote an opinion letter to officials in Maryland. According to Mr. von Spakovsky, "Congress obviously intended that...where the results indicate the registrant is not eligible, has provided inaccurate or fraudulent information, or information that cannot be verified, then the application must be denied." This interpretation is not only incorrect, it is inconsistent with the whole purpose of HAVA. After all, the statute is entitled "Help America Vote Act," not "Help the States Make It Harder For Voters to Vote Act."

HAVA (Section 303) does not require a person be denied registration (or denied a regular ballot at the polls) if there is no successful match of information. This provision of HAVA instructs states on how to maintain and manage their internal voter registration database. Nothing in HAVA contemplates penalizing a prospective voter when the state is unable to match the information on their voter registration application. Section 303(b) of HAVA, for example, imposes an ID requirement on certain unmatched voters (those first-time voters who registered by mail) and when such voters produce the required ID, they then are entitled to cast a regular ballot (not a provisional ballot). Such voters are required to instead cast a provisional ballot only if they cannot produce an ID. Congress thus prescribed an ID requirement for a limited category of voters and did not require all

voters whose information could not be matched, or who lack an ID when they arrive at the polls, to cast a provisional ballot. Indeed, for a state to interpret HAVA in a way that forces ALL voters lacking an ID, or whose information cannot be matched in a DMV or Social Security database, to choose either not to register or to require a provisional ballot may violate the Constitution. *See Fla. Conference of the NAACP v. Browning*, 522 F. 3d 1153 (11th Cir. 2008). Indeed this was precisely the argument recently made by the Brennan Center and Professor Dan Tokaji at Ohio State's Moritz College of Law: "[t]he fact that Congress prescribed an identification requirement on a limited category of voters [only first-time voters who registered by mail, *see* 42 U.S.C. § 15483(b)] indicates that it didn't mean to require ALL voters whose information can't be matched, and who lack identifying information when they appear at the polls, to be relegated to provisional voting status."[5]

Although some states, such as Wisconsin, have backed away from rules requiring voters to cast provisional ballots unless the State registration system verifies a "complete match" of their name, and have instead decided to wait and see how many voters are affected by mismatches in the system, other states might yet adopt procedures that make it difficult for mismatched voters to cast regular ballots. California has promulgated regulations regarding "Deficient Registration Records" which specify that, in cases where the "substantive information required to determine eligibility to vote," including the registrant's name, citizenship, address or place of residence, birth date, state or country of birth, and statement of eligibility (i.e. registrant is not a felon), is deficient, the registration record will be automatically returned to the elections official who submitted

[5] The Brennan Center-Tokaji letter may be found here: http://moritzlaw.osu.edu/blogs/tokaji/BC&TokajiLtr-WIGAB.pdf

it and must be corrected and resubmitted within five business days of receipt of a deficiency notice. 2 CCR § 20108.25. Section 20108.25 further states that an individual who is the subject of the deficient registration record shall not be registered to vote until the deficient registration record is corrected and accepted by Calvoter, the State's computerized registration system. *Id.* If an individual is not registered to vote pursuant to this section of the California Code, he or she may only vote by provisional ballot. *Id.*

Florida recently passed a law which bars any Florida citizen from registering to vote if the state cannot match or otherwise validate the voter's driver's license or Social Security number on a registration form. That law is currently being challenged in the courts. The Brennan Center at NYU Law School has led the way in this suit, and in a similar lawsuit that successfully challenged a Washington State law in 2006. See *Washington Association of Churches v. Reed,* 492 F. Supp. 1264 (W.D. Wash. 2006).

The extent of the voter registration mismatch problem remains unclear, but the problem does appear to have potential significance.[6] Due to matching problems, up to 25 percent of submitted registrations in California were rejected during the first three months of 2006. As of July 18, 2008, *The Wisconsin Journal Sentinel* reported that "Wisconsin doesn't know yet how well voter registration data will line up with driver records." The *Journal Sentinel* article also noted that in Pennsylvania, "15% of the [voter registration] records didn't match, but two-thirds of the problems were caused by data entry errors."[7]

---

[6] *See* Justin Levitt, *Making the List: Matching and Verification Processes for Voter Registration*, Brennan Center 2006 Report, *available at*: http://www.electiondefensealliance.org/files/Brennan_MakingList_DatabaseMatching.pdf; *see also* Wendy Weiser testimony regarding the EAC before Congress, 2/2008: http://www.brennancenter.org/content/resource/testimony_before_congress_regarding_the_eac/; regarding California specifically, *see also* http://www.opednews.com/articles/genera_dan_ashb_080131__22fatal_pending_22_erro.htm.

[7] *Wisconsin Journal Sentinel*: http://www.jsonline.com/story/index.aspx?id=774257

Attorney Adam Skaggs of the Brennan Center has "said that matching in other states failed about 20% to 30% of the time." Another source noted that, in the State's September primary, "some [Maryland] precincts couldn't access the state database because of computer software glitches, and there were no printouts to consult. Some machines mysteriously rebooted without warning. Both issues caused voting delays. State officials have said those problems will be rectified by Nov. 7."

The National Academy of Sciences, which has done extensive work on the difficulties of database matching, has urged caution in relying on matching due to the types of problems outlined above. States would be wise not to purge voters due to mismatching and likewise should not use HAVA as an excuse for requiring voters who are unable to be matched to cast provisional ballots.

New Voter Registration and Voter Identification Requirements

HAVA's voter ID requirements are easily the most misunderstood and misapplied of its provisions by election officials. HAVA provides that new registrants must provide their driver's licenses or the last 4 digits of their Social Security Number with their voter registration application in order to become registered. (If the person does not have either of these, HAVA mandates the state to assign the voter an identification number).

HAVA requires that those voters who appear to vote for the first time and who registered to vote by mail after January 1, 2003 must show identification before they will be allowed to vote. Note that not all first time voters must present an ID under HAVA; *only first time voters who registered by mail*. In states that do not require a form of ID at the polls, poll officials sometimes mistakenly require all voters to show an ID (apparently under the flawed assumption that HAVA mandates it) or require all those who are voting

for the first time to present some form of identification before casting a ballot. Yet HAVA contains no such requirement.

Moreover, HAVA does not contain any requirement that first time voters who register by mail produce a particular ID or a photo ID. The ID required under HAVA need not be a photo ID or a government issued ID. Rather, "a current and valid photo identification; or…a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter" is sufficient. *See* 42 U.S.C. §15483.

Despite these clear requirements, some election officials continue to insist on a driver's license as the only acceptable form of voter ID. Indeed, despite state law provisions to the contrary some officials require an ID even when state law does not require one. In Virginia, for example, in 2006, a voter who lacked an ID (but who was a duly registered qualified voter) was denied the right to vote. He was denied the right at the polls to execute an affidavit and cast a ballot, which he had the right to do under state law. He brought suit in federal court and the County settled the suit. *Gillette, v. Weimer and Prince William County, Virginia Electoral Board, No. 1-08cv188-LMB (E.D. Va.)*

Another problem which has surfaced in recent elections stems from election officials selectively asking minority voters to produce an ID. A study of the implementation of New Mexico's voter identification law in the 2006 election found that—despite receiving training from election administrators—polling places and even individual poll workers varied widely in their application of that law.[8] And the

[8] R. Michael Alvarez, Lonna Rae Atkeson & Thad E. Hall, The New Mexico Election Administration Report: The 2006 November General Election (Aug. 2, 2007), available at http://www.vote.caltech.edu/reports/NM_Election_Report_8-07.pdf.

New Mexico law provided the occasion for racial and ethnic discrimination at the polling place level—voters who self-identify as Hispanic or who have Hispanic surnames were significantly more likely to be asked by poll workers for identification than were other voters. I have received reports from the Asian American Legal Defense and Education Fund indicating such disparate treatment with regard to IDs has been directed at Asian American voters as well. It is extremely important that all election officials, particularly those working at the polls on Election Day 2008, are clearly informed of what, if anything, state law requires with regard to voters providing an ID and that election officials carry out those provisions in a nondiscriminatory manner.

Problems such as the misapplication of voter ID laws and the failure to find registered voters on the rolls lead to delays and long lines at the polls, which are exacerbated by the difficulties in recruiting and training poll workers. These problems may fall disproportionately on minority communities. The problems compound themselves in minority communities: they sometimes get the most inexperienced poll workers, the worst polling locations, an inadequate number of machines, and have the most problematic voter registration rolls (voters who have moved, who don't vote regularly, who don't have ID, and those who have health or other problems). The long lines on Election Day are usually the result of a culmination of these problems rather than a single cause.

State officials since 2004 have continued to take steps with regard to purging the voter registration rolls, but sometimes the procedures chosen can have dire consequences for voters. Take, for example, the State of Alabama.

The Justice Department sued Alabama in 2006 and the then-Democratic Secretary of State (SOS) Nancy Worley for failure to implement HAVA. The Republican Governor was appointed a special master by the U.S. District Court Judge (Keith Watkins), a Bush appointee, to take over responsibility for implementation of HAVA. The State hired Election Systems & Software (ES & S) to develop the database. The Governor's office developed a list of felonies and sought the agreement of the Administrative Office of Courts (AOC) (controlled by the Chief Justice) that this list be used to purge the voter rolls. The AOC did not agree with the Governor's list and proposed a different, much shorter list of felonies. ES&S nevertheless implemented the database using the longer list of felonies and its impact was apparent in the June 2 primary that year.

In the 2006 elections, Democrat SOS Worley was defeated and was replaced by Beth Chapman (R). As a result of the application of a flawed list of convictions, there were instances of qualified voters being denied the right to vote in the 2006 elections. For example, one voter who was denied the right to vote in Alabama in 2006 was a man previously convicted of a felony, but who had his voting rights restored and had voted for a number of years prior to 2006. In another case, a man was denied the right to vote even though he had never been convicted of a felony (but had been convicted of a misdemeanor), and even though he had voted several times after his misdemeanor conviction. The danger that undeserving voters will be disenfranchised on Election Day continues to loom large.

Just this week, the ACLU on behalf of several voters has filed suit in Montgomery, Alabama, against state officials. *Baker v. Chapman.* According to its state

constitution, Alabama may deny voting rights to individuals who have been convicted of felonies involving "moral turpitude." Although this term is not defined, the Alabama Constitution states that only the legislature can decide which felonies qualify under this category. In its lawsuit, the ACLU charges that the state is disfranchising thousands of Alabamians under a much broader category of convictions than is permissible under the constitution, relying in part on an opinion issued by Alabama's Attorney General.[9]

The ACLU is seeking an injunction that would stop the state "from discouraging, interfering with, or preventing any person who has not been convicted of a crime listed in the Alabama Code (§ 15-22-36.1(g)) from registering to vote in all state and federal elections." The plaintiffs have also asked the court to require the state "to disseminate public service announcements throughout the State of Alabama that inform citizens convicted of felonies which do not appear in Ala. Code 15-22-36.1(g) of their right to register and vote."

Misallocation of Voting Machines:

A *New York Times* story earlier this week entitled, "Influx of Voters Expected to Test New Technology," quoted an election expert from the Pew Center on the States as follows:

> Election officials are unanimous in their commitment to ensuring every eligible American's right to vote, but in many places the system they oversee simply isn't designed to handle anywhere near the number of voters that may turn out, said Doug Chapin, director of electionline.org, a

[9] According to the ACLU's press release announcing the suit, "The Alabama legislature adopted a list of about 15 serious felonies that fit the moral turpitude definition for disenfranchisement, including murder, impeachment, treason, rape and various sex related offenses. But in 2005, Alabama Attorney General Troy King developed his own broader list of disfranchising felonies, as well as a short list of those that do not fall into this category. The Attorney General's list includes 16 felonies that are disqualifying, including passing a bad check,, and six that are not disqualifying, such as possession of controlled substances and DUI-related offenses. Other felonies were simply not addressed. In addition, election administrators across the state are currently disqualifying citizens from voting for felony convictions that neither the legislature nor the attorney general has ever listed as disfranchising offenses."

> project of the Pew Center on the States. In previous elections, the question has been, 'Will the system work for each voter?' But this year the real question is whether the system can handle the load of all these voters.

I share the concern that the current system may not be able to handle the record voter turnout that many anticipate this fall. A report being issued next month by the nonpartisan group FairVote, for example, notes there is a risk that election officials may not allocate a sufficient number of extra ballots or voting machines to precincts experiencing heavy turnouts. Indeed, the FairVote report will note that, consistent with the *New York Times* article, "[t]he swing states that experienced the longest lines, including Florida, Michigan, Missouri, Ohio and Pennsylvania, lack uniform rules for distributing machines and ballots[.]" What we saw in Ohio in 2004 was that state and local officials failed to take adequate steps to ensure that there were sufficient numbers of voting machines in certain precincts. As a result, undue delays were created, often lasting several hours, and many voters left polling places in frustration, and without casting their votes.[10] In Franklin County, Ohio, a DOJ review completed in June 2005 found that "it was not uncommon for voters to have to wait three or more hours to cast their ballots." The long lines and exceptionally long delay, DOJ found, was "due to the lack of sufficient machines to serve a dramatically enlarged electorate[.]"[11]

DOJ's review acknowledged that there were more registered voters per voting machine in predominantly black precincts than white precincts. What is particularly unsettling, however, is that DOJ also concluded that the allocation of voting machines

---

[10] Critics might say "if these people really wanted to vote and it was important to them, they would have stood in line and voted." But such a response fails to take into account the reality that many voters face and the wide variety of circumstances why a person cannot stay for several hours at the polling place to cast a ballot: the need for a single parent to pick up their child at day care, the inability of an elderly or disabled person to wait in line for such a long period, etc.

[11] The letter may be found here: http://www.talkingpointsmemo.com/docs/tanner-franklin-letter/

actually favored black voters because more white voters were voting on each machine, on average, than black voters. Of course, since many black voters were unable to vote due to the inadequate number of machines and long lines, it follows that fewer blacks voted per machine than voters in the predominantly white precincts. Moreover, in order for DOJ to make a determination about the allocation of machines and the number of voters by race who cast ballots on those machines, it would have needed data on the flow of voters in black and white precincts; but no such data were available. The DOJ conclusion is even more absurd when one considers that it was thousands of black voters, not white voters, who complained about being unable to vote.[12] No one in Franklin County disputed that predominantly black precincts lacked enough machines to adequately administer elections, as compared to predominantly white ones.[13]

Distinguished voting rights expert Tova Wang, now Vice President for Research at Common Cause, recently made the point that the allocation of voting machines could prove problematic in 2008: "Allocating enough ballots and machines is tricky science under any circumstances, but especially when turnout is proving to be so unpredictable."[14]

The misallocation of voting machines is a greater concern this year because of the spike in registrations in minority communities with an African-American leading a ticket. Many states and localities will experience different patterns of turnout and may

---

[12] At Kenyon College in Knox County, Ohio, DOJ found that "there were long delays in voting at the Gambier/Kenyon site, where the majority of the registered voters are college students. Some voters chose to wait until approximately 4:00 a.m. to cast their ballots on Knox county voting machines instead of using available paper ballots." http://www.usdoj.gov/crt/voting/misc/knox.htm

[13] As a former DOJ official, I was struck by the exculpatory nature of the language used in the letters sent to Franklin County and to Knox County. Traditionally, the Department's policy is not to discuss the reasons why the Department decided not to take a certain action, but rather briefly to let the subject of an investigation know that the investigation had been completed and no further action would be taken.

[14] Influx of Voters Expected to Test New Technology, *NY Times*, July 21, 2008.

not be prepared for it. Already there is substantial evidence of increased registration that should be a warning signal to local officials.

Thus, what happened in Franklin County in 2004 might very well happen again in numerous counties throughout the U.S. this fall: administrative failure to prepare for the high turnout combined with a failure to allocate voting machines in high turnout areas, particularly in predominantly minority areas and other areas that have seen a surge in voter registration numbers. The lesson to be learned from those places that saw a failure to allocate sufficient voting machines in 2004 is this: the allocation of machines should be made to ensure ease of voting for all voters, and not according to a mathematical formula that results in hours-long lines in some precincts and minutes in others.

Vote Caging Efforts: Lessons from Ohio in 2004

Vote caging is an illegal voter suppression technique used to keep minorities (mostly blacks) from voting. It's a relatively-unknown cousin in the nefarious family of vote suppression techniques. The practice has been adopted and perverted from a practice utilized by direct-mailers to clean up their mailing lists by sending out mail to specific individuals and seeing what comes back. The real problems start when political operatives start cherry picking areas likely to vote against their candidates.

"Caging" is a direct mail technique used to describe cleaning up a mailing list. A political organization sends first class mail to a list of voters (or donors) marked "do not forward." Sometimes, the mail is sent return receipt requested. Voters whose mail comes back undeliverable, or who do not return the receipt, are removed from the list – caged, in direct mail parlance.

"Vote caging" is when a political organization, typically a political party, compiles a "caging list" of voters whose mail came back undeliverable or who did not return the receipt, and uses that list to challenge those voters as not being validly registered. These registration challenges can occur prior to Election Day or at the polls.

The problem with using a caging list to challenge voters is simple. First, the list is most often produced using criteria aimed at a particular racial group (there have been documented instances of caging in African-American precincts, for example). Second, there are plenty of reasons why mail sent to a validly registered voter might be returned as undeliverable or without the signed return receipt requested, especially because political organizations usually make sure that their mailers are non-forwardable. For instance, the voter may be serving abroad in the military or away at college. Address errors, especially in urban areas, are common. A voter may have forgotten to put his or her apartment number on the voter registration form. Typographical errors in preparing the list of voters to whom mail will be sent – Gonzalez becomes Gonzales – can also result in a piece of mail being returned as undeliverable when in fact the individual lives and resides at the listed address. Such typographical errors on registration rolls can also lead one to conclude, in error, that an individual is not registered to vote when in fact he or she is validly registered.

Most commonly, the mailer is returned because the voter has moved. Still, many voters who have moved are still validly registered and eligible to vote. In vote caging schemes where a return receipt is requested, voters simply may not want to accept mail from that particular political party. Reportedly, this was the case in Ohio in 2004, when African-American voters did not want to accept mail from the GOP.

Despite the fact that many voters who might end up on a caging list are validly registered, there is nothing illegal *per se* about compiling a list of voters. What is illegal under the Voting Rights Act and the U.S. Constitution is vote caging that targets minority voters, *i.e.,* directing mail to them, and only selectively challenging their attempts to vote on Election Day.

When former Deputy Attorney General Paul McNulty testified before Congress in 2006, he offered to have DOJ look into the issue of vote caging ("If you're raising with me as Deputy Attorney General the question of caging votes, I'm very happy to work with you on that concern."). To my knowledge, DOJ never responded to Congress on what DOJ found about its review of vote caging. DOJ did not even offer a progress report on how its inquiry into vote caging was going. I would recommend that this Subcommittee inquire about the DOJ's their findings and about whether many vote caging or voter intimidation investigations are presently underway. That should give us a clear indication of whether DOJ will take as seriously the prosecution of those who intimidate voters, as they do those who allegedly commit voter fraud.

I do know about a clear example of vote caging/intimidation that took place in Dallas, Texas in the 2006 election cycle. An anonymous mailer was sent to voters in predominantly African-American precincts informing black voters that if they were recently registered to vote, they could be arrested when they went to polling places. I have attached a copy of the mailer to my testimony. Despite this obvious effort to intimidate black voters and suppress their voting rights, when the matter was immediately brought to the attention of the FBI, the Bureau determined, *without conducting any investigation*, that no action would be taken. Recently, I again brought this complaint to

the attention of DOJ, and I have been informed that the Civil Rights Division has it under review. What "under review" means is not clear, but I am hopeful that the Civil Rights Division attorneys are permitted to do their jobs free from political interference and therefore that the DOJ will at least conduct an investigation of this attempt at voter intimidation and take appropriate action.

Conspiracies to stop African-Americans from exercising their constitutional right to vote aren't new – and neither is vote caging. The Republican National Committee has been under a federal consent decree not to engage in the practice since getting caught in the 1981 gubernatorial election in New Jersey. Despite the injunction, which remains in effect, vote caging schemes continue to be used as an integral part of an ongoing campaign to suppress minority voting rights. We need to be on the watch for them in 2008.

To bring these schemes to an end will require vigorous prosecution by the United States Department of Justice. But the Department's priorities have shifted over the years, with the Bush-Ashcroft-Gonzales Justice Department not only ignoring vote caging schemes, but actively working to give vote-cagers a boost in the courts. Contrast, for example, the Department of Justice's efforts in 1990 in North Carolina, under President George W. Bush's father, to the Department's actions in the 2004 election cycle in Ohio. In 1990, the North Carolina Republican Party and the Jesse Helms for Senate campaign engaged in vote caging by sending black voters 44,000 postcards, giving targeted individuals incorrect information about voting and threatening them with criminal prosecution. The plan was to use the mailing to compile a caging list. In response, the Bush I Justice Department, where I served at the time as a federal prosecutor of voting

discrimination cases, filed a federal lawsuit against the GOP and Helms' campaign and obtained declaratory and injunctive relief.

The 2004 Ohio GOP Vote Challenge Scheme

Ohio was ground zero for the hotly contested 2004 election – and also a hotbed of voter intimidation. The Ohio Republican Party developed a caging scheme and identified 35,000 newly registered voters in urban areas, mostly black, who either refused to sign for letters from the Republican Party or whose letters came back undeliverable. An attorney for the Ohio Republican Party even admitted that the plan was to use the returned letters from minority neighborhoods to challenge voters.

Prior to Election Day, when the caging list would be used to challenge voters at the polls, the caging scheme was challenged in court on two fronts. In New Jersey, voters filed suit against the RNC for violating a 1982 consent decree. The RNC argued that the consent decree only applied to it, not the Ohio Republican Party, which planned to supply the challengers, and therefore the consent decree was inapplicable to the Ohio election. The federal court rejected that argument, and, on Nov. 1, 2004, ordered Republicans in Ohio not to proceed with the caging scheme on Election Day. Meanwhile, in Ohio, voters filed suit (*Spencer v. Blackwell*) to challenge the Ohio law permitting political parties to post challengers (armed with caging lists) in polling places on Election Day.

While the court battles were playing out in New Jersey and Ohio in the days and hours leading up to the 2004 election, with the rights of minority voters hanging in the balance, did the Department of Justice step in to enforce the Voting Rights Act? Unsurprisingly for anyone who has followed the ongoing scandal over the politicization of the Civil Rights Division, the answer is "of course they didn't." Perversely, the Justice

Department sent a letter to the Ohio federal judge overseeing the lawsuit to tell her that the challenged statute that was used to justify the vote caging scheme was perfectly fine.

Then Assistant Attorney General Alex Acosta's Oct. 29, 2004 letter to District Judge Susan Dlott was unusual not just in that it attempted to offer legal cover for the same practices that 12 years earlier DOJ had sued to stop, but also because it was nearly unprecedented for DOJ to intervene in a case on the eve of Election Day in which it had not previously participated, because its involvement was unsolicited, and because it was not a party. Mr. von Spakovsky was directly involved in drafting this letter to Judge Dlott.

Judge Dlott refused to heed the advice of the Assistant Attorney General, and found that permitting the challenges would have a racially discriminatory impact. The court's decision cited the fact that Hamilton County Republican Party filed to have 251 additional challengers at the polls and that of the 251 challengers listed, two-thirds of them filed to be challengers in predominantly African-American precincts. The federal court issued an injunction that blocked the racially targeted challenges, noting that "[t]he evidence presented at the hearing reflects that 14% of new voters in a majority white location will face a challenger… but 97% of new voters in a majority African-American voting location will see such a challenger." *Spencer v. Blackwell*, No. 1-04-738-SJD (Order of November 1, 2004).

In the end, the caging scheme was stymied but not due to any action by the DOJ, which did its best to insinuate itself into the controversy and defend the scheme. (For a thorough discussion of other voter intimidation techniques that succeeded, see *Preserving*

Democracy: What Went Wrong in Ohio, Status Report of the House Judiciary Committee Democratic Staff, January 5, 2005 ["the Conyers Report"].)

Insufficient Numbers Of Poll Officials And The Lack Of Training:

HAVA does not mandate poll worker training, but the Act does require states to spell out in their HAVA implementation plans how the state plans to train its poll officials and to educate other election officials (such as general registrars). Information pertaining to voting must also be posted at every polling place on Election Day, including the posting of a sample ballot, instructions on how to vote (including the casting of a provisional ballot), and information about ID requirements for first-time voters who registered to vote by mail.

Provisional Voting Issues

HAVA mandated that provisional voting be offered to all voters to ensure that every eligible voter who is registered or who believes they are registered can cast a ballot in federal elections with the knowledge that a fair process will be followed to determine if the provisional ballot is eligible to be counted. In October 2004, the United States Election Assistance Commission (EAC) issued a Resolution on Provisional Voting. EAC also urged all States and election officials to utilize federal funds received under HAVA to conduct voter education campaigns that would enable voters to become familiar with their rights to cast a provisional ballot, and to make sure those provisional ballots are cast at a location where they stand the best chance to be counted. This latter recommendation was made because some states deemed a provisional ballot to be validly cast only when cast at the voter's assigned polling place or precinct. In such states, EAC urged state election officials to make information available to poll workers at all precincts and/or

polling places that would allow the poll workers to determine the voter's assigned precinct and polling place. This could be done, the EAC noted, by giving poll workers information (such as the entire list of eligible voters for that jurisdiction) or a means of communication (telephone service to election headquarters or maps of adjoining precincts) that would help to insure that a voter is sent to the correct precinct to vote and thus have their ballot counted. States were also obligated under HAVA to set up toll free numbers or websites where voters who cast provisional ballots could later determine if their vote got counted and, if it was rejected, the reasons for invalidation.

Where is the Department of Justice in 2008?

One of the biggest differences between 2004 and 2008 is the fact that DOJ has been purged of a number of officials who misused Department resources to pursue a political agenda. Indeed, in the Civil Rights Division, two officials notorious for blatantly using their positions to advance a partisan agenda were Brad Schlozman and Hans von Spakovsky. Minority voters are far better off today with these two persons off the Justice Department payroll, because these former DOJ officials will no longer be in a position to thwart minority voting rights and use voting rights laws to advance their political goals.

But it is curious, if not troubling, that the Department of Justice is not at this hearing today to offer its plans for enforcement of voting rights during this election year. The Department needs to be forthcoming about its election year activities, from pre-election criminal law enforcement efforts to the assignment of federal poll watchers and attorneys. What steps will the Department take to ensure that there are no pre-election

indictments of individuals for a relatively minor alleged voter fraud offense, pursued simply to affect the outcome of an election?

And shouldn't the Department of Justice openly explain how it will assign federal watchers, particularly given the Department's 2004 program of assigning Bush loyalists to monitor elections in battleground states? From discussions with the Voting Section Chief in 2004, Joseph Rich, I learned that in assigning election monitors (attorneys) and observers in 2004, DOJ official Brad Schlozman personally reviewed every single assignment and vetoed many of the Voting Section's recommended assignments. In Ohio, where DOJ's career attorneys felt DOJ did not need a federal presence on Election Day, Schlozman informed Mr. Rich early on that there would federal attorneys sent to Ohio. According to Mr. Rich, Schlozman dispatched loyalists in three cities – Cleveland, Columbus and Cincinnati. While there were civil rights issues that surfaced closer to the election (after the decision had already been made to send DOJ attorneys to Ohio), the two person monitoring teams sent to Ohio did little beyond sitting in hotel rooms and taking telephone calls. There was no monitoring by these attorneys to check on racially-based challenges or intimidation, according to Joseph Rich.

Furthermore, Schlozman himself monitored the election in Miami on Election Day. In short, it was clear to Voting Section management that political appointees at DOJ and in the Civil Rights Division wanted to have loyalists on the ground in that key state. This is yet another example of politicization of the voting section responsibilities, as well as inefficient use of personnel and resources.

The DOJ should only assign monitors and observers to those places where there is evidence of possible civil rights violations, or as part of an ongoing investigation into

election practices. Another lesson learned from the widespread public suspicion that political reasons were behind monitor/observer placement decisions in 2004 is the following: the Department of Justice, when it announces the locations where the Department will be deploying federal observers, should also make public in a general way the civil rights concerns that underlie their decisions. Such a pronouncement should emphasize the fact that the Department (Criminal Division) has a longstanding policy of not monitoring for election fraud purposes and indeed does not conduct such investigations until after the election. This has been a long-standing practice of the election crimes branch of the Criminal Division.

There a serious need for enhancing the transparency of DOJ's activities, especially given the prevalence of partisan-driven activity by DOJ in the 2004 and 2006 election cycles. Little came out at the annual Civil Rights Division/Criminal Division voting symposium this summer about DOJ plans for monitoring this year's election– and Congress should insist that everyone – from Attorney General Mukasey, to Civil Rights Division Acting Assistant Attorney General Grace Chung Becker, to Voting Section Chief Christopher Coates – explain in some detail their monitoring plans at least a month before the election. And DOJ officials should be required in advance of the election to follow up with more detailed information when they announce where federal attorneys and federal poll watchers will be assigned.

Thank you for the opportunity to testify and to offer these views.

Mr. NADLER. I thank you, Mr. Hebert. We will now go to the questioning, and I will recognize myself for 5 minutes for the purpose of questions.

First, Mr. Hebert, in reporting on the Supreme Court decision in the Indiana voter ID case in April, the New York Times quoted Mr. von Spakovsky as saying, "This decision not only confirms the validity of photo ID laws but it completely vindicates the Bush Justice Department and refutes those critics who claim that the Department somehow acted improperly when they approved Georgia's photo ID law in 2005."

Do you take issue or do you agree with that statement and, if so, why?

Mr. HEBERT. I completely disagree with that statement for the following reason. The Supreme Court in the Indiana voter ID case said that the statute in Indiana was facially constitutional. There were no allegations that the Indiana statute violated the Voting Rights Act, which was a decision the Justice Department made when it approved the Georgia voter ID law. In Georgia the voter ID law that was approved by the Justice Department, and Mr. von Spakovsky was part of that decision-making process when they approved that voter ID law, that was later struck down in the courts as an unconstitutional poll tax. Georgia went back and adopted a new law that eventually passed muster in the courts. So I don't think that——

Mr. NADLER. And that was in some respects different from the Indiana ID law? You said the Indiana law would not have been called a poll tax?

Mr. HEBERT. That's correct. Because in Georgia they actually required you to buy an ID in order to vote. In Indiana it was provided free.

Mr. NADLER. I thank you.

Mr. von Spakovsky, in May of 2005, outgoing Deputy Assistant Attorney General Bradshaw on his last days at the Department issued a letter opinion to the State of Arizona. That letter wrongly informed Arizona that it could stop voters from receiving a provisional ballot if they did not have State identification.

In September of the same year, 2005, Brad Schlozman sent a letter to Arizona correcting the Department's opinion and stated individuals can request and cast a provisional ballot for any reason. In Mr. Schlozman's sworn testimony before the Senate Justice Department committee he said he had nothing to do with the drafting of the May 2005 letter, but it was probably done by "the voting counsel and the front office." Was that you?

Mr. VON SPAKOVSKY. I was the voting counsel in the front office of the Civil Rights Division.

Mr. NADLER. So you drafted that letter or had input into it?

Mr. VON SPAKOVSKY. Well, I think the letter you are talking about was signed by Sheldon Bradshaw, not Brad Schlozman. Is that the letter you're referring to?

Mr. NADLER. Yeah, the May 2005 letter, that's right.

Mr. VON SPAKOVSKY. Yes, I drafted the letter.

Mr. NADLER. Okay. Now during that year did you have communications with the State of Arizona or the Secretary of the State of Arizona in relation to Arizona's Proposition 200?

Mr. VON SPAKOVSKY. Frankly, Mr. Chairman, I don't recall. I mean, at some point the Proposition 200 was submitted to the Civil Rights Division for preclearance under section 5. And of course one of my responsibilities was, you know, reviewing any claims or files that came up from the Voting Section on section 5. So I—you know, whether someone at that office called about that, you know, it may be, but I mean that was—3 or 4 years ago. I frankly don't remember.

Mr. NADLER. Okay. All right. And a year later, in 2006, when you were at the FEC, did you have any communication with the Department of Justice or the State of Arizona about Proposition 200 implementation?

Mr. VON SPAKOVSKY. No, sir.

Mr. NADLER. Okay. And I'm a bit curious about something else. It has been reported that you worked for an organization called the Voting Integrity Project prior to 2000; is that correct?

Mr. VON SPAKOVSKY. I was on the Board of Advisors, yes.

Mr. NADLER. The Board of Advisors. So you didn't work for them?

Mr. VON SPAKOVSKY. I did some contract work for them.

Mr. NADLER. And did this——

Mr. VON SPAKOVSKY. That was before I went to work for the Justice Department, sir.

Mr. NADLER. Yes, prior to 2000.

Mr. VON SPAKOVSKY. Right.

Mr. NADLER. Now, it's been reported that the Voting Integrity Project played a role in the Florida efforts to purge alleged felons from the voting rolls in 2000.

Mr. VON SPAKOVSKY. That's false.

Mr. NADLER. That's not true?

Mr. VON SPAKOVSKY. That is not true.

Mr. NADLER. It had nothing to do with that?

Mr. VON SPAKOVSKY. No.

Mr. NADLER. Okay. Do you know who headed—did any private organization have anything to do with that, to your knowledge?

Mr. VON SPAKOVSKY. My understanding of that just from reading the papers is that the State of Florida hired a data service company, I don't remember the name of it, to provide them with a list. And I had absolutely nothing to do with it. That's one of these stories that somehow got on to the blogosphere and then got repeated all over. It's not true.

Mr. NADLER. Good to hear.

Now critics have called the voter purges in Florida during the 2000 elections a wildly inaccurate voter purge list that mistakenly identified 8,000 Floridians as felons, who were not felons, and thus ineligible to vote and that listed 2,300 felons as felons despite the fact that those 2,300 had had their civil rights restored by State action.

Now what can we do to ensure that as States purge voter lists that those purges don't—and in fact it was reported that that 20 percent error rate was known in advance and somebody in Florida—I'm not going to ask you who, I have no idea whether you know it—but that someone in Florida determined that was acceptable, that a 20 percent error list, meaning one out of every five peo-

ple on that list would be improperly denied to vote. That was acceptable to deny the vote to people who should have been denied to vote who were on the list.

What can we do to make sure that that voter purge lists are accurate and are not used either deliberately or not deliberately to deny the vote to people who should be able to vote?

Mr. VON SPAKOVSKY. Well, first of all, I'm not an expert on Florida because I wasn't an election official in Florida in 2000 and didn't have anything to do with it. But I will tell you what I think about that. The mistake and assumption here that's being made is that when the States, because of these new HAVA databases which require them to do data matching, that they automatically drop people when the information doesn't match. That's not what they're doing. What—my understanding is what the States do when they get a situation like this, and this isn't any different than when a county election board, for example, gets information that there may be a problem with a particular registered voter, with accurate information. My understanding is what they do when there is no match is they then contact the voter by either calling the voter, the person who is registering or by sending them a letter——

Mr. NADLER. Well, we've heard testimony that they should, but clearly some do and some don't.

Mr. VON SPAKOVSKY. Okay. Well, what should happen when—what should happen when a match comes back and shows there's a problem with a voter registration application is that election officials contact the voter and explain it to them, say look, we've got this problem, can you provide an explanation?

Mr. NADLER. There should be—there should be a communication with the voter?

Mr. VON SPAKOVSKY. Of course.

Mr. NADLER. Mr. Hebert, could you just briefly, since my time has basically expired, comment on the question I asked and on Mr. Spakovsky's answer.

Mr. HEBERT. I agree with him the election officials should contact the voters, but it's not happening in all instances and not happening in all States. And what often happens is when the communication is done, it's done with a letter that oftentimes may arrive to the voter in a time period that's insufficient for the voter to take whatever corrective action is necessary in order to provide the information that allows the match to take place. And so they are not registered within the time period required——

Mr. NADLER. Well, let me just follow that up with one further question. Should the Justice Department do something in time for this election to make sure that that problem doesn't occur and, if not, should Congress do something?

Mr. HEBERT. Yes. Yes, the Justice Department should do something, and here's what should be done. Any person who is duly registered to vote but their name is not able to be matched exactly on a State database, there ought to be—that person ought to be listed on the registration rolls, and when they go to vote they should have an asterisk next to their name saying, by the way, we weren't able to match up your date and here is the information. What can you tell us? Is it a hyphenated name or is it a maiden name, and you

fix it that way. You don't deny people the right to vote. And Congress could amend HAVA to made that clear.

Mr. NADLER. I thank you. My time has expired. I recognize for 5 minutes the distinguished Ranking minority Member of the Committee, the gentleman from Arizona, Mr. Franks.

Mr. FRANKS. Well, thank you, Mr. Chairman. I thank all of you for being here. Mr. von Spakovsky, I wanted to just kind of explore a couple of things with you related—you know I have—I'm on the Armed Services Committee, and I have to tell you that it does hit me pretty hard that those—if you're correct, that those overseas are the ones that seem to have the least success at voting. Oftentimes those are a lot of our fighting men and women that lay their lives and their blood down for this country, and people on this panel, most of us talk about freedom, those individuals pay for it, some profoundly high prices to themselves.

So I guess what I wanted to ask you is what is really causing the problem? Who is at fault here? That's the first question I ask. Why aren't—let's start with the military. Why aren't they getting their ballots?

Mr. VON SPAKOVSKY. The problem frankly, Congressman, is because the military voters are still voting the way they did 100 years ago. The way—the way—if you're—if you're a combat soldier in Iraq what you have to do to get a soldier ballot, you have to send a request for an absentee ballot back to your home election official. If you're from a county in Texas, so you have to send that to the county official in Texas requesting an absentee ballot. They check it and then they prepare an absentee ballot, and then they have to mail it back to you in Iraq. When you get it in Iraq, you complete the ballot, and then you have to mail it back. That takes a lot of time, particularly because of the slowness of overseas mail and because once you get into a combat zone the mail gets even slower getting to—that's why a large number of these ballots, even the ones that are completed are returned too late to count in the election.

Several years ago Congress authorized an appropriation for the Department of Defense to try to build an electronic voting system based on the Internet which would electronically deliver a ballot to a soldier, soldier would be able to complete it and send it back. That system was canceled after a number of computer scientists took a look at it and said that it was not a secure enough system. A lot of people say the Internet simply has too many security holes to ever use it that way.

I mean that's why I mentioned the Military Protection Act. That's kind of a good interim step. That would provide so that once the ballot gets to the overseas military bases, it would provide international express service to get it back. That would mean that as long as the soldiers got the ballot by the Friday before the Tuesday election, it could get returned in time to be counted.

The future for this I think is shown by a pilot project that's going to go on with this election out of Okaloosa County. Okaloosa County is a big county down in Florida. They have a lot of military voters, and the county election officials there are sending some of their election officials to three overseas military bases where they have a lot of soldiers. And they are going to open up an early voting site

using computers, where one of the military voters can come in, they'll check to make sure they are on the voter registration list, they'll pull up the ballot they are supposed to get and they'll be able to vote right there. And setting up early voting sites at U.S. military bases and perhaps U.S. embassies in the future actually might be one way of greatly resolving this issue.

Mr. FRANKS. If we were—I should say if you were to tell us what you think we could do either in the Armed Services Committee or the Judiciary Committee here to in the short term to effect this in the most expeditious manner to help those who defend this country have the best opportunity to vote in the elections, what would that be?

Mr. VON SPAKOVSKY. The first would be to pass that bill that's been introduced to provide for international express pickup of the ballots overseas to bring them back to the U.S. And I think the other thing would be to push the Federal Voting Assistance Program office, that's the office at DOD that administers the UOCAVA statute. Just set an automated computer system that can be accessed by local election officials who have—a particular county may have 500 voters that they know or UOCAVA voters, who are supposed to get absentee ballots. They ought to be able to send that list to 500 voters to the FVAP office. FVAP office runs it through the DOD directory that shows where these people are currently located. And they correct any of those addresses that they receive, send them back to the local election official, so the local election officials get the ballots to the right location.

Mr. FRANKS. Mr. Chairman, it seems to me that the U.S. military is one of the most effective logistical organizations in the world except for perhaps Wal-Mart, and we should be able to find out a way to help our soldiers out.

Thank you, I yield back.

Mr. CONYERS. [Presiding.] Thank you, Mr. Franks.

Mr. Spakovsky, is there any other problem besides the military?

Mr. VON SPAKOVSKY. Well, I mentioned another problem. I think there are a number of problems.

Mr. CONYERS. Just state one other.

Mr. VON SPAKOVSKY. It is hard to cover them all in 5 minutes.

Mr. CONYERS. Well, you don't need 5 minutes to just name one other——

Mr. VON SPAKOVSKY. I tell you another one I think is a problem. That is the Help America Vote Act required States—it required the States to set up rules for how provisional ballots would be reviewed—and local and States. And I don't think that all the States are property set out——

Mr. CONYERS. Maybe it's your mike. Let's switch mikes here. So, over here there is a signal. They switched mikes.

VOICE. Someone will be here momentarily. In the meantime the witness can continue.

Mr. VON SPAKOVSKY. This one's on. I'm sorry, Mr. Chairman. I kind of lost track of where we were. One of the problems is making sure all the States have their provisional ballot rules laid out so that everyone understands what the rules are, particularly both parties understand that, so that we don't have the situation that I think Professor Tokaji talked about earlier, which is I think it

would be very unfortunate if we have a very close election in November, if there were fights in every county or State where there were large numbers of provisional ballots similar to the kind of fights that unfortunately went on in Florida over the punch card ballots.

Mr. CONYERS. Now can you summarize what you just told me is the second problem that you bring to our attention?

Mr. VON SPAKOVSKY. The second problem was that there are cases from various parts in the country that indicate that individuals who are not U.S. citizens, both legal and illegal, are registering to vote and have voted in some elections, and that is something also that I think needs to be fixed.

Mr. CONYERS. Uh-huh. Have you found a major problem with absentee voting?

Mr. VON SPAKOVSKY. There are cases from around the country.

Mr. CONYERS. I know that, but is it a major problem in your mind?

Mr. VON SPAKOVSKY. Well, there have been a number of elections such as——

Mr. CONYERS. Is it major in your mind?

Mr. VON SPAKOVSKY. I'm sorry, what?

Mr. CONYERS. Is it a major problem, absentee voting and fraud——

Mr. VON SPAKOVSKY. I think absentee voting is very vulnerable to voter fraud, and there have been many cases from around the country of elections being overturned such as Miami in 1997, Georgia.

Mr. CONYERS. Okay, but I just noticed you didn't mention it.

Mr. VON SPAKOVSKY. I only had 5 minutes, Mr. Chairman. It's hard to mention all the various problems that there are in 5 minutes.

Mr. CONYERS. Okay, I see.

Professor, I'm indebted to you for trying to help us develop a framework around which we can encourage the Department of Justice Voting Section to get on the stick now rather than do this business after problems pop up, and things that are quite clearly predictable occur and then they rush out to deal with it, but the damage of course has been done. The day of and the day after the election isn't going to help us much in trying to clear it up. And so you've been very, very important in helping us develop a process and some recommendations to bring to Attorney General Mukasey as to how the Voting Rights Section ought to be operating.

You pointed out that a lot of the people are new. And Mr. Hebert has pointed out a lot of the old people that we probably were kind of happy have left, but the new people don't have much experience either. And so this discussion is very important to me because I'm going to Grand Rapids on Sunday afternoon to speak with the Secretaries of States. And I want to be able to give them the benefit of the discussion that's gone on in this hearing. To me it's very important. And both your suggestions will be incorporated in what I'm going to tell them about. As to what—how we can work with them?

And I was wondering if you, Mr. Hebert, have any recommendations as to things that we might want to put in our comments be-

cause we've got a lot of problems out there in the States because of a lot of voting practices get off to the wrong foot by the things, as we found out in Ohio, the Secretary of State does.

Ms. DANIELS. Thank you, Congressman Conyers. I think we should operate from the perspective that if we knew then, meaning if we knew in 2000 what we know now, we would do things differently. I would hope that we would. And certainly since the Department of Justice knows more now than it did in 2000, there are certainly ways that can alleviate many of the problems that occur such as the ill-advised vote purge in Florida or the voter registration problems as well as the faulty voting machines. And I've outlined in my written testimony a number of things that can be done. And I also would suggest, strongly suggest, that this body recommend to the Civil Rights Division Voting Section that they would begin a proactive approach, such as things they have done in the past.

For example, in 2004, in July and in September, they sent letters to all of the Secretaries of State saying that, discussing UOCAVA compliance, and that that is something that can be done now and discussing and sending a letter to the Secretary of State saying here are the issues we have seen in 2004 and in 2006, issues with voter registration, issues with poll watchers, overzealous poll watchers which would cause—certainly I would think I would argue were a primary cause for a number of the problems in the poling place in 2004, having overzealous poll watchers challenge eligible voters and then having poll workers who did not know how to respond, and requiring people to cast provisional ballots that may or may not have been counted. So there are certainly a number of recommendations that could occur.

And certainly again I would—there are things that DOJ can do and things that they have done in the past that they should continue to do, but they must be proactive and must act now.

Can I add one more thing if I may? During my time at the Department of Justice one of the things that diminished incredibly was outreach to civil rights organizations, and I think that that has been the cause of the lack of—you talk about the lack of voter confidence, there certainly is a lack of confidence amongst civil rights organizations in the Department of Justice and particularly the Civil Rights Division, and ensuring and knowing that it can be trusted to enforce, assuming that the mission of the Civil Rights Division remains to enforce those civil rights laws. I think there are a number of organizations that question that. And the way to restore confidence is for the Voting Section in particular to reach out to organizations like the NAACP and others.

Mr. CONYERS. Thanks so much. Mr. von Spakovsky, do you have any recommendations along these lines?

Mr. VON SPAKOVSKY. Well, the idea that the division did not meet with civil rights organizations I believe is incorrect. I worked for all three of the Assistant Attorney Generals who were head of the division, Ralph Boyd, Alex Acosta and Juan Kim. All of them met extensively with civil rights organizations.

I recall that in—I don't remember the exact date, I think the summer of '04 Mr. Acosta, who was my boss at the time, had a very large meeting with a large group of civil rights organizations

to explain to them the procedures that the Department was going to put in place for the upcoming election and how they were going to make decisions on where to send observers and seeking, you know, comments, suggestions from those organizations. And I agree with Ms. Daniels that they should do that. And I think—I think they will.

Mr. CONYERS. Thank you very much. Which three Attorney Generals or Administrations did you work with?

Mr. VON SPAKOVSKY. Well, there have been three that were confirmed by the Senate to run the Civil Rights Division, Ralph Boyd, Alex Acosta, and Juan Kim, and I worked with all three of them before.

Mr. CONYERS. Which Administrations were those?

Mr. VON SPAKOVSKY. I'm talking about in this Administration.

Mr. CONYERS. Oh, okay. All right, that's wonderful. By the way, I've discussed this with Trent Franks and he's agreed that we—and I'm going to discuss it with the rest of our Committee Members on both sides so that we might ask you folks to come in and talk with us about how we make our recommendations to the Department of Justice so that we don't come up at the last minute, you know, just issuing statements and guidelines that may be too late to be implemented or be of any usefulness. So I appreciate your cooperation.

Mr. Hebert.

Mr. HEBERT. Real quickly, because I know you're rushed for time here and it's the end of the day. I would agree that it's important obviously for the Justice Department to meet with civil rights organizations and voting rights groups and others. But you have to do more than just meet. You have to kind of agree on what the procedures are going to be at the Department of Justice when you encounter a real problem, say like vote caging, as the Chairman notes all too well. So that would be a recommendation there. And you have three former DOJ officials here on your panel now, and I would be happy to offer whatever advice I have.

I would say if you're meeting with Secretaries of State I would say that HAVA should not be—the mismatch problem I mentioned earlier, that HAVA should not be an excuse to drop people off the rolls, that in fact like a suspense list now if you don't vote in a couple of elections in a row you don't struck necessarily off of the rolls. You get put on a suspense list, and then when you go to vote they say, hey, you haven't voted in the last election or two, so we're going to move you from that there. They could create such a list under HAVA for people who have the mismatch problem.

I would say also that when the Secretaries of State see the Department of Justice sending monitors into their State in a place that it doesn't seem right to them, that they ought to question it, because what we saw in 2004 was oftentimes the dispatching of Federal official into places for political reasons, not for civil rights reasons. I think they should be warned about no discriminatory enforcement of voter ID laws, as I mentioned earlier.

And then lastly this may be one of the few points Mr. von Spakovsky and I agree, I think overseas voters, particularly those in the military serving the country, that Secretaries of State ought to be reminded to get the ballots over to people in time so that they can make the cross international trip in time to be counted.

I remember in my days in DOJ I sued George Wallace when he was Governor of Alabama for failure to enforce the Uniformed Overseas Citizens Voting Rights Act because Alabama sent ballots too late to the military men and women overseas.

Mr. CONYERS. Thank you. Keith Ellison.

Mr. ELLISON. Thank you, Mr. Chairman. You know, I read your article and you say here that it is indisputable that noncitizens are voting. What proof do you have that noncitizens are voting?

Mr. VON SPAKOVSKY. Well, Mr. Ellison, it is hard to summarize an entire article in a couple of minutes, but I have extensive citations in that article to GAO reports to——

Mr. ELLISON. You know I actually read——

Mr. VON SPAKOVSKY [continuing]. Testimony——

Mr. ELLISON. Excuse me, sir. I have got 5 minutes and I got your answer.

But you know I read your article and I saw some cites and none of it to me was evidence that noncitizens are voting. In fact, in your opening sentence you cite that there are 3 percent of the 30,000 individuals called for jury duty over a 2-year period were noncitizens and extrapolate from there that we have all these noncitizens voting. It is just sort of argument by analogy and not any real proof.

Mr. Hebert, let me ask you this what do you think about voter ID laws?

Mr. HEBERT. Well, I filed a brief in the Indiana voter ID case saying that.

Mr. ELLISON. Me too.

Mr. HEBERT. I know you did. You and I were on the same side. I think that voter ID laws are often offered up as necessary to combat voter fraud, but I think the case for voter fraud is largely overblown, that to the extent there may be voter fraud it is most often committed through the absentee ballot process and not through in person voting, so therefore voter ID laws really don't get to the real root of the problem.

Mr. ELLISON. As you know, Mr. Hebert, that Indiana law didn't even address absentee ballots, did it?

Mr. HEBERT. It did not, that's correct.

Mr. ELLISON. Now, here's something that happened on May 7th in the Indiana election. A dozen nuns and other unknown number of students were turned away from the polls Tuesday in the first use of Indiana's stringent voter ID law since it was upheld last week by the United States Supreme Court.

Mr. von Spakovsky, do you want to stop nuns from voting?

Mr. VON SPAKOVSKY. You——

Mr. ELLISON. Why don't you want nuns to vote, Mr. von Spakovsky?

Mr. VON SPAKOVSKY. Congressman Ellison.

Mr. ELLISON. I'm just curious to know.

Mr. VON SPAKOVSKY. Those individuals knew they had to get an ID. They could have easily done so. They could have voted by absentee ballot. Nursing homes, I think under the law, are able to——

Mr. ELLISON. Mr. von Spakovsky, what does easily mean for a 98-year old nun?

Mr. VON SPAKOVSKY. Are able to get——

Mr. ELLISON. Mr. von Spakovsky, are you aware that a 98-year old nun was turned away from the polls by a woman——

Mr. VON SPAKOVSKY. They all had passports which means they—expired passports, which meant they could have easily gotten an ID.

Mr. ELLISON. Mr. von Spakovsky, do you know that a 98-year old nun was turned away from the polls by a Sister who's in her Order and who knew her, but had to turn her away because she didn't have the government issued ID? That's okay with you?

Mr. VON SPAKOVSKY. Yes. And the woman who was——

Mr. ELLISON. Is that all right with you?

Mr. VON SPAKOVSKY. The nun refused to give them provisional ballots, which was a violation of Federal law. She was obligated as a local election official to provide them with provisional ballots.

Mr. ELLISON. Mr. von Spakovsky, how old was she?

Mr. VON SPAKOVSKY [continuing]. To do it because she didn't want to have to take them down to the local election office where they could have by affidavit sworn to who they were and their vote would have counted.

Mr. ELLISON. So a 98-year old nun is turned away from the polls and your answer is she should have had her passport?

Mr. VON SPAKOVSKY. The U.S. Supreme Court said that that law was fine and the plaintiffs in that case after 2 years——

Mr. ELLISON. The United States—no, Mr. von Spakovsky.

Mr. VON SPAKOVSKY [continuing]. Of litigation they weren't able to provide a single individual who did not have an ID or could not easily get an ID.

Mr. ELLISON. They can't take us down at the same time. The time is mine, I reclaim it now.

That decision was made before those dozen nuns were turned away from the polls, not after.

Mr. VON SPAKOVSKY. Would you like to hear the turnout from the May 6th election?

Mr. ELLISON. When I have a question I'll pose it to you.

Mr. Hebert.

Mr. VON SPAKOVSKY. You don't like the answer that I want to give.

Mr. ELLISON. I'm going to ask you to stop cutting into my time. Thank you.

Mr. VON SPAKOVSKY. Well, you're not allowing me to answer the question.

Mr. ELLISON. I don't have a question to you, sir.

Mr. VON SPAKOVSKY. No, you asked me a question and kept interrupting me.

Mr. ELLISON. Mr. Chairman, I ask the witness be instructed to cease, because I'm not asking him a question.

Mr. Hebert, is turning a 98-year old nun away from the polls who was perfectly eligible to vote otherwise what America should be doing in terms of encouraging voters to participate in elections?

Mr. HEBERT. No, we should not be making it more difficult for people to vote. In the case of the nuns they had been voting for many years, they were all duly registered to vote. Yes, I suppose they could have been offered a provisional ballot, but then they

would have been required to go a second step and go down later to the voting office and produce actual identification.

I think we've reached a point in this country where we should really, really stop and think about if we're going to try to spread democracy in the world, we should try to correct the imperfections of our own democracy here at home by making it easier for people to vote, not making them jump through additional hurdles.

Mr. ELLISON. Ms. Hebert, does this voter ID that blocked 98 year old nuns from voting—Ms. Daniels, excuse me—is that what you believe our voting laws should be doing?

Ms. DANIELS. No, sir, and I think on the first day of class I always ask my election law students what type of democracy would they like to create. If they want to create a democracy where persons are restricted or dissuaded from voting you can do that by creating stricter voting ID laws, by having provisional ballots and making it more difficult for people to actually vote. Or if you want a system where all eligible citizens are allowed to vote without all of the inhibitors that we're currently creating. I think that's the system that we want to create and I think we're certainly moving in a direction, and I agree with Mr. Hebert. I think we're certainly moving in a direction where we're making it more and more difficult for people to participate in our democracy.

Mr. ELLISON. Mr. von Spakovsky, I have another question for you. Did you ever experience frustration with U.S. attorneys because of their inability or unwillingness to go after voting fraud cases?

Mr. VON SPAKOVSKY. I had nothing to do with U.S. attorneys. The U.S. attorneys are part of the Criminal Division of the Department of Justice. I worked in the Civil Rights Division, which has nothing to do with the U.S. attorneys.

Mr. ELLISON. Right. I asked you if you ever experienced frustrations with U.S. attorneys who refused to prosecute what you believed were voting fraud cases? You can experience frustrations without being a U.S. attorney or without being in charge of U.S. attorneys.

Mr. VON SPAKOVSKY. Congressman, I wasn't in the Criminal Division. So I wouldn't have been advised or been given information about any voter fraud investigation——

Mr. ELLISON. So do you——

Mr. VON SPAKOVSKY [continuing]. Conducted by the——

Mr. ELLISON. So did you ever contact any U.S. attorney or anyone who supervised U.S. attorneys regarding voter fraud cases?

Mr. VON SPAKOVSKY. Um——

Mr. ELLISON. That's a yes or no. If it's no, it's no, sir.

Mr. VON SPAKOVSKY. No. The answer to that is that occasionally, and both of my compatriots here at the table know this, U.S. Attorneys would get calls directed to them about a voting issue and they would take a look at it. And if it was not a criminal matter, if it was not a criminal election matter but if it was a civil rights matter, they would direct the call to the Civil Rights Division for us to handle. And so yes——

Mr. ELLISON. Mr. von Spakovsky——

Mr. VON SPAKOVSKY. I may have occasionally had conversations with assistant U.S. attorneys who were calling our office to tell us

about some kind of complaint that they had received which was not within their purview or something we should look at.

Mr. ELLISON. So that's a yes, thank you.

Now were you part of a discussion that U.S. Attorney Heffelfinger of Minnesota should be fired because he expressed deep concern about the effect that a directive that could have—that could have discouraged Indians from voting in Minnesota?

Mr. VON SPAKOVSKY. I don't recall being part of any such conversation.

Mr. ELLISON. Did you ever discuss Attorney General—I mean U.S. Attorney Heffelfinger in voting fraud cases in any sense?

Mr. VON SPAKOVSKY. No.

Mr. ELLISON. You never mentioned his name to anybody?

Mr. VON SPAKOVSKY. No, I didn't know the man.

Mr. ELLISON. That's not what I asked you.

Mr. VON SPAKOVSKY. I never discussed—I don't know him. I didn't know him and I've never discussed him with anyone at the Department of Justice or elsewhere.

Mr. ELLISON. Okay, were you part of the discussions relating to the failure of Biscupic in Wisconsin, on John McKay in Washington, or John Graves in Missouri to bring election-related prosecutions?

Mr. VON SPAKOVSKY. No, sir, because I was not in the division that the U.S. attorneys were in.

Mr. ELLISON. Did you ever discuss these issues or relate your views about them in terms of these prosecutions?

Mr. VON SPAKOVSKY. No.

Mr. ELLISON. And what involvement did you have in the voting prosecution brought by Brad Salzman in Missouri?

Mr. VON SPAKOVSKY. I had not. I was at the Federal Election Commission. Why would I have any involvement with something the Department of Justice was doing when I wasn't even working there?

Mr. ELLISON. Well, partly because you have an obsessive fear that people might vote who you don't want to and so you contact the U.S. Attorney's Office to try to stop folks from voting. So I'm——

Mr. VON SPAKOVSKY. That's a fantasy. That's a fantasy that you're making up, Congressman. I have nothing to do with Federal prosecutions going on by the Department of Justice when I was at the Federal Election Commission. That's ridiculous.

Mr. ELLISON. Well, I'm asking you, you answered. You're on record now and we'll see whether it matches up with the facts.

Mr. VON SPAKOVSKY. Are you accusing me of lying, Congressman?

Mr. ELLISON. I'm asking you questions, sir. Haven't you been here?

Mr. VON SPAKOVSKY. And I'm telling you that that's a ridiculous question and that I would have nothing to do with Federal prosecutions when I wasn't working at the Department of Justice?

Mr. ELLISON. And you put yourself on record and that's fine and we'll check it out.

Mr. VON SPAKOVSKY. Well, you go ahead and do that.

Mr. ELLISON. I will, I plan on it.

I yield back.

Mr. CONYERS. Bobby Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

Ms. Daniels, you use a term "political operatives" manipulating the voting process to disenfranchise eligible citizens. What did you mean by that?

Ms. DANIELS. What did I mean by political operatives?

Mr. SCOTT. Manipulating the voting process.

Ms. DANIELS. One example would be the use of poll watchers. States can determine who can witness the actual casting of ballots. They can tell you who—State laws determine who can watch the actual polling process. In 2004 there was an onslaught of Republican and Democrat poll watchers within the polls, and in some instances there were more poll watchers than poll workers or even voters. There were certainly instances, reported instances of where Republican poll watchers were very aggressive and were using their status of being inside the polls to challenge persons on a racial basis as well as whether or not they spoke English well, challenging language minorities as well as some instances, African Americans.

I think that's an example of political operatives, meaning people who were placed there for a political purpose, instead of being there to ensure that the process was handled fairly, were there strictly to challenge persons based on race and language.

Another example would be vote caging, which is a process that I'm sure you all are familiar with, where persons, poll watchers, may have a list of voters that they are there to challenge because they may have sent them a mailing that was returned undeliverable. And they specifically target areas. In this instance in 2004 Republicans were specifically targeting areas, African American areas; when those persons came to vote those persons were challenged. And that happened in Ohio and in Milwaukee, Wisconsin. In 2004, Republicans in Wisconsin attempted to challenge the registration of 5,600 voters in Milwaukee but were turned down by a unanimous decision by the city's bipartisan election board. In Ohio there was a Republican scheme to challenge 35,000 voters, and that was also turned down, that was also stopped.

So there are certainly instances where political operatives are trying to manipulate the process to their advantage.

Mr. SCOTT. Thank you.

Mr. Hebert, what's wrong with requiring all potential voters to have their citizenship verified?

Mr. HEBERT. Well, the biggest problem is that right now most of the voter registration applications and the DMV applications provide that information already. You know, asking that question. And there's a provision for that——

Mr. SCOTT. Well——

Mr. HEBERT [continuing]. In most of the applications.

Mr. SCOTT. Having to verify it and prove your citizenship for some people becomes problematic. We had somebody in my office who said they were adopted and couldn't get a birth certificate.

Mr. HEBERT. No, I mean proof of citizenship requires documentation. Oftentimes the documentation requires money. If you can prove who you are and you're a registered voter, you shouldn't have

to then come back again and prove that yes, I'm a registered voter and I'm also a citizen. If a noncitizen registers to vote and a noncitizen then votes, as Mr. von Spakovsky has pointed out, there are penalties for that. It is not that widespread frankly. And most of the time people who register to vote who are noncitizens, it's usually as a result of filling out a DMV application and the DMV application doubles as a voter registration application, it automatically goes in, and they become registered as a noncitizen and they don't even know it.

It is kind of like Mr. Ellison's question a moment ago about what proof is there that noncitizens are voting, and Mr. von Spakovsky quoted a GAO report about jury rolls. Mr. Scott, you and I are both from Virginia, we know how jury rolls are constructed in a lot of States. They are not just the voter registration rolls. They sometimes use DMV records and so on. You don't have to be a citizen to get a DMV——

Mr. SCOTT. Well, in fact we specifically stopped restricting our list to registered voters and went to driver's licenses and things like that because the voter registration lists were too restrictive. Some people were not registered. So they wouldn't be called for jury duty for example.

Mr. HEBERT. That's exactly right.

Ms. DANIELS. Mr. Scott, may I add on the proof of citizenship issue that I think we'll see problems with that when the REAL ID is implemented, which was supposed to take effect in May of this year but was extended to next year. I think we'll really see problems, because REAL ID requires proof of citizenship as well.

Mr. SCOTT. Can the panelists comment on Secretary Blackwell's lack of embarrassment at the long lines, suggesting that the long lines were not a source of embarrassment, but actually a good thing.

Mr. HEBERT. Well, let me start out by saying that the Department of Justice did a study actually of some of the Ohio problems in Franklin County and found that the long lines in Franklin County, and I think I cited to this letter in my testimony, in my written testimony, actually said that they were as a result of the failure to provide an adequate numbers of machines at the polling locations. And in fact one of the documents Mr. Blackwell submitted with his testimony is a news article where the Democratic chairperson of the Franklin County Board of Elections said "we messed up." There were long lines at the polls and as a result of that that's a consequence of us not having enough voting machines.

I'm going to check because I know I can supplement my testimony later, but I believe that there was a request made from Franklin County for more voting machines to Mr. Blackwell in advance of the election and he turned it down. I'm going to try to verify, because that's my recollection of what happened in 2004. I don't think long lines for voters are ever a positive sign, it is great to have voter turn out.

Mr. SCOTT. You never answered my question as to how long a wait would constitute a denial of rights.

Mr. HEBERT. Too long. You know when you go to vote——

Mr. SCOTT. There were suggestions that people were waiting several hours.

Mr. HEBERT. Three to 4 hours is what happened in Ohio. In Kenyon College students had to stay until 4 a.m. In order to vote. They were already in line, they brought them all inside and they were still able to vote but they had to get more machines brought over. Kenyon College is in Ohio. So I think that election officials with proper planning and based on turnout and voter registration numbers.

Mr. Watt made the great point with Mr. Blackwell when he said you look back on data, that's helpful, but if you see suddenly a huge surge in voter registration applications this year in African American precincts you don't have to go back and say hey, how many people voted in 2004. You know how many people are registering now, you ought to get some machines in there and make sure there are adequate numbers.

Ms. DANIELS. It's not limited to Ohio. The same thing happened in Prince George's County, Maryland as well as Atlanta, Georgia. And I think in answer to Mr. Watt's question to Mr. Blackwell was, particularly in HAVA, using the power of the purse to ensure that there are enough voting machines for the number of registered voters.

Mr. VON SPAKOVSKY. I don't necessarily disagree with that. But I think what we have to keep in mind that we had a record turnout in the '04 election. The turnout in Ohio was I think one of the highest in the country. And it's very clear that the election officials there frankly got flat footed when they were doing the allocations based on voter registration rates and prior turnout. It's more of an art than a science when a local election official is trying to figure out how many voting machines to put in each thing. On the other hand, we should keep in mind that, as I understand it, they had had the same number of voting machines for a number of years, and from like 1996 through the 2002 election they hadn't had any problems.

Mr. VON SPAKOVSKY. Now, I agree. I don't think people should have to wait in line for a long time, and I think election officials have to do a better job of looking not just at past turnout, but, yeah, look at the voter registration rate as it is progressing through the year when they are trying to figure out how many machines to put out.

Again, that brings up one other issue, because I used to be a county election official. We were dependent, unfortunately, on the county commission providing us with the kind of budget we needed to buy election equipment, and one of the problems a lot of counties have is that they don't get enough money from their county governments and from State legislatures to buy all the kind of equipment that they need.

Mr. SCOTT. Does it concern you that the flat-footedness tended to have a partisan aspect to it?

Mr. VON SPAKOVSKY. I have to agree with Secretary Blackwell about the issue that the decisions on how many machines to put in into all those counties was made on a bipartisan basis. For example, Gary Hebert mentions the problem at the college precincts in one of the counties. That particular precinct, if I recall correctly, had three times as many individuals come in to vote as they had in the prior election. And the local county quickly got paper ballots

to that precinct so the people would not have to wait in line to use the voting machines.

As I understand it, both the chairman of the county Republican Party and the chairman of the county Democratic party both showed up at the precinct at 9 o'clock, along with local election officials, to assure the people that were waiting in line that they could vote on the paper ballots, that they would be counted just the same as the voting machines. But apparently some people who were there, I think some of them were like some professors at the local college, unfortunately told everyone in line that, no, they shouldn't vote the paper ballots, they wouldn't be counted. Basically gave them bad information.

That situation would have resolved itself. That was a good example of bipartisanship. Both party Chairs went down there to try to get the situation resolved and tell people, look, they could vote these paper ballots, they wouldn't have to wait in line, and the situation would fix itself, and unfortunately it didn't. It is regrettable that they had to stand in line for that long to vote. I certainly wouldn't want to do that.

Mr. HEBERT. Mr. Scott, let me just say that I don't think I am going to sit here and testify under oath that I would blame the Kenyon College students because they had to stand in line until 4 in the morning and ultimately get to vote. I think one of the positions was that they felt they were entitled to vote like everybody else on a machine that would record their vote, and my understanding was that a number of them said, "I don't want to vote a paper ballot, I want to vote the way everybody else votes," and the county had an obligation to provide those machines.

I would say—and, Mr. Chairman, you will appreciate this perhaps more than anybody on the panel, given your long tenure in the Congress and having seen so many elections come and go. It is interesting. You asked about a partisan skew to this problem about voting machines. There wasn't a lot of big allegations coming out of Ohio that it was White folks who were denied the right to vote. It was Black people in Black precincts that didn't have enough machines. Why do we always come back to this and scratch our heads and say, how can this always seem to happen to our people?

I don't understand this. I still don't.

Mr. CONYERS. Coincidence.

Mel Watt.

Mr. WATT. Thank you, Mr. Chairman.

Mr. Hebert, Mr. von Spakovsky, is there some reason we couldn't have polling places on military bases or in embassies in other countries? Is there some legal reason?

Mr. VON SPAKOVSKY. Yeah, I think there is a prohibition about that. But I think it would be worthwhile—I think what needs to happen is I think the National Association of Secretaries of State and the National Association of State Election Directors, which are the two respective national groups that represent both the secretaries and State election directors, I mean, they ought to get together and see if there isn't a way that they could come up with a system that——

Mr. WATT. Is there a legal impediment to it?

Mr. VON SPAKOVSKY. There is a Federal law that would have to be changed to open up early voting sites run by the States.

Mr. WATT. Okay.

Mr. HEBERT. I don't know the answer to that question, Congressman Watt. I will look into it.

Mr. WATT. We did allow a Liberian—there were polling places in the United States for a number of foreign countries' elections, aren't there?

Mr. HEBERT. I believe so.

Mr. WATT. We believe in democracy for other people, don't necessarily believe it in for our own people. I was just wondering. That wasn't a trick question. I actually agree. That is the one shining example of the things that you all have agreed on, and I definitely agree that we ought to be providing opportunities for U.S. citizens to vote, wherever they are, and the technology now, it seems to me, is available to do that. Actually, I think technology is available for somebody who lives in North Carolina who happens to be in California on election day to vote, too, if we were really committed to the proposition that people ought to be allowed to vote, rather than committed to the proposition that we got to make it more difficult.

I never have quite understood the registration requirement. Why do I need to be registered if I am a citizen? I go in and vote. Anyway, get me on my soapbox.

Let me turn back to the question that I was so disappointed with Mr. Blackwell about his answer, I guess, to my real concern about the 2008 election, which is that massive numbers of people are going to be standing in line, waiting for hours to vote, disproportionately in various places that we would really like to be incentivizing them to vote for a change, on college campuses, in minority communities. His answer to that would, I guess, be to chuckle and say that would be a good thing. He didn't say it in direct response to the question, but turnout would be high; therefore, that would be a good thing.

How can we avoid what seems to me to be so apparent is going to happen in this election? What can we do at the Federal level to stop that? I see it, and I don't know how to solve it. Tell me what we can do as a practical matter.

Mr. HEBERT. Well, one thing that could be done is the Justice Department interacts with secretaries of state all the time, and Members of Congress sometimes do as well. The one thing about the long lines, if there is a large voter turnout, which we expect based on what we have seen so far, the key to efficiently moving voters through the flow is to ensure that there are adequate numbers of poll officials and adequate numbers of voting machines or ballots at each facility. Those determinations can be made not just based on how many voters voted in the past. If you look at 2004, that doesn't really tell you much, or 2006, about what is going to happen now. The key is to look at the most recent data that you can that sheds light.

Mr. WATT. I am with you there. But even if we anticipated that, how could we make that happen at the State level or at the precinct level? What can we do?

Mr. HEBERT. It has got to be done by secretaries of state down through to the local election officials. Mr. Blackwell issued tons of

memos just prior to the election, changing all kind of procedures. It is why he ended up being sued 40 times in the preelection period.

But the fact is that secretaries of state can take this action now, and the Department of Justice can make them take that action now because it is going to have often a racially disparate effect if they don't.

Mr. WATT. So in a State that is covered by the Voting Rights Act, preclearance required, is projected ratio of voting machines to voters, would that be reviewable?

Mr. HEBERT. Well, if they change the procedures, but——

Mr. WATT. If they change the numbers, would that be?

Mr. HEBERT. I don't believe it would be necessarily.

Mr. WATT. Mr. von Spakovsky, first of all, do you share the belief, this notion that I have, that this is going to be a massive problem in the November election? If you don't, we are not going to ever solve the problem, and I am not even going to comment on how you solve it if you don't believe it is going to be a problem. I will just go on to the next witness.

Mr. VON SPAKOVSKY. I probably agree with you.

Mr. WATT. How can we solve it?

Mr. VON SPAKOVSKY. We had record turnout in the 2004 election, and I think we may have another record turnout here. Before the 2000 election——

Mr. WATT. Tell me how we can solve it.

Mr. VON SPAKOVSKY. There are now two kinds—basically, the whole country has now moved to two kinds of voting machines from the four or five we used. Many States and counties now use Optiscan ballots. Those are paper ballots.

Mr. WATT. Are you getting ready to tell me how we can solve this problem?

Mr. VON SPAKOVSKY. Yes. The States that have switched to Optiscan ballots, they aren't really going to have a problem with getting ready for a high turnout election because it is frankly very easy to print a larger number of paper ballots and get them to the precincts where they are needed, because the way the Optiscan system works, as you know, is the voter gets a paper ballot, he or she fills it out, and then before they leave the precinct, they run it through a computer scanner, which counts the votes, and it drops into a ballot box. There is only one or two computer scanners for each precinct, but you can increase——

Mr. WATT. You are saying——

Mr. VON SPAKOVSKY. I am saying in precincts that use the paper Optiscan ballots, they will be able to print the larger number of ballots they need for a high-turnout election. The problem is going to be in—and I think it is probably about a third of the country that switched over entirely to electronic voting machines, because each electronic voting machine, it is basically a computer, and they are a lot more expensive than getting paper ballots printed, and those jurisdictions that have a certain number of electronic voting machines, I think, will have a tough time between now and the election if they decide they need more of those electronic voting machines——

Mr. WATT. Don't keep describing the problem to me. I keep asking you what the solution is.

Mr. VON SPAKOVSKY. I think there is a solution for the States that have switched to Optiscan paper ballots. I think the States that have switched to electronic voting machines are going to have a problem because I don't think they are going to have the money to buy the additional machines they need, and, frankly, I am not sure that the companies that produce it have the manufacturing ability to produce enough machines if they decide they need a lot more.

Mr. WATT. So we are just going to have a chaotic November election.

Mr. SCOTT. Would the gentleman yield?

Mr. WATT. I would be happy to yield, but I want Ms. Daniels to tell me how to solve this problem, or somebody.

Ms. DANIELS. Mr. Watt, you can use section 5 to hopefully alleviate the problem in covered jurisdictions. For example, if they are making a submission where they are reducing the number of polling places, it is reviewable. In 2006, there was actually an objection to the Montgomery Community College submission in Houston, Texas, where they were reducing the number of polling sites.

Mr. WATT. Where you are trying to reduce. Let us assume—I mean, you know, even Mr. Blackwell didn't suggest we reduce the number of polling sites. He just said base it on what we did in 2004. Nobody is suggesting that. I am trying to look forward. How can we solve this, knowing that—I mean, I can just see it. Mr. Scott was going to tell me, maybe. Somebody.

Mr. SCOTT. I was going to ask whether the backup was at the voting or at the desk where you are trying to get processed. I mean, you were saying that the voting machine process was where the backup might occur. Seems to me that at the desk where you are trying to check in may be the bottleneck.

Mr. WATT. That is true. Most of the people I saw were standing outside the polling place. They never got to the voting machine to be the holdup. The holdup was getting past the people who were processing them to get them to the voting machine. So maybe that is part of the solution.

Ms. DANIELS. Poll worker training; particularly poll worker training and the need for more training.

Mr. WATT. More people and more training, yes.

Ms. DANIELS. I would agree.

Mr. HEBERT. I would add one other thing. For places that have voting machines or electronic machines that break down, you have to have sufficient number of paper ballots as a backup in case there is a real problem, power failure or whatever.

Another way to alleviate the problem of overcrowding at the polls is to, when people come in, allow them to go and cast a paper ballot just to get them away from the table that Mr. Scott is mentioning, the bottleneck.

Mr. WATT. Mr. Chairman, my time is up, but I hope these three wonderful witnesses, all of whom, I guess—I didn't ask Mr. Hebert or Ms. Daniels whether they envision this same problem. I did ask the one that I thought may not. He envisions it, too. I hope you all will spend some time in the next couple of weeks before we com-

plete this record trying to tell us what we can do here, what the Justice Department can do there, what we can require States' attorneys general, secretary of state, local precinct people, because I can just see this coming.

If we don't anticipate it and deal with it before election day, you are just going to have massive chaos out there, and people are going to go away disenchanted, unhappy, feeling like democracy has not worked again for the third straight Presidential election in this country, and that would be such a shame for this country. I mean, this is not partisan, this is democratic. So I hope you all will come up with some written suggestions to us about practical things that we—just make me a list of things that we should be asking the Attorney General to ask whoever down the line to do, or what we should be doing, if we need to change the laws. Whatever we need to do, we need to do it quick because we are going to have chaos in November, in my opinion, once again.

I yield back. I thank the Chairman for his generosity.

Mr. HEBERT. I did think of one further thing. It doesn't necessarily relate to overcrowding, but it relates to a question that Mr. Franks posed earlier, and that is currently the Secretary of the Veterans Affairs Department has refused to allow voter registration to occur at VA facilities by nonpartisan groups. Now, these are people ultimately who perhaps almost paid the ultimate sacrifice, and they are recovering, and maybe they are not registered to vote. Shouldn't we go out of our way to do everything possible?

I would ask you to write to the Secretary of Veterans Affairs and demand that these people be allowed—be given the opportunity to register, just register to vote, and hopefully afforded the right to cast their ballot. So, that would be one final.

Mr. CONYERS. Excellent recommendation.

I want to thank Professor Daniels, Mr. von Spakovsky, Mr. Hebert, and particularly my colleagues Trent Franks and Bobby Scott and Mel Watt. We will have 5 days to send out questions. You can send back answers and comments so that they will go into the record.

I think there are 102 days before November 4. I think this hearing has been extremely worthwhile in terms of fleshing out the areas that we are going to have to work in.

So I thank you all very much. The Subcommittee is adjourned.

[Whereupon, at 6:08 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Robert A. Destro
Attorney at Law

Memorandum

To: **David Lachman, Esq. & LaShawn Warren, Esq.**
From: **Robert A. Destro, Attorney for J. Kenneth Blackwell**
Date: **November 11, 2008**
Re: **Corrections for Ken Blackwell's House Judiciary Committee Testimony July 24, 2008**

Attached you will find a list of the changes proposed by Mr. Blackwell.

Thank you for your cooperation.

Mr. Blackwell proposes the following correction:

Page	Lines	Topic
46	991-992	Change "were sued" to "would be sued."

Mr Blackwell proposes the following clarifications to be added as footnotes to the transcript

Questions by Mr. Davis

In a series of questions beginning on page 54 (line 1193) through 60 (line 1201), Mr. Davis sought to examine "what happens when election officials run campaigns." (p. 54, lines 1188-1189).

Page	Lines	Transcript
56	**1245-1254**	Mr. DAVIS. So you assumed that role with all of these potential controversies going on. I fully understand your observation that there was nothing in Ohio law, nothing in Federal law that precluded you from playing that role. So that is not my point. Let us not waste time on that. But it seems to me that a reasonable secretary of state, a reasonable chief election officer might have thought that there was an appearance of a conflict of interest. Are you now a reasonable person who had that perception, sir?
56	**1255-1256**	Mr. BLACKWELL. I am a very well reasonable person, but perhaps your definition of reasonableness is—
56	**1257-1258**	Mr. DAVIS. Would a reasonable person see a conflict of interest there?

The explicit allegation is that a conflict of interest (actual or apparent) exists in every case in which any public official with a "significant role" in the elections process (p. 55, lines 1220-1231) serves a campaign in any capacity. Although Mr. Davis states that he "fully understand[s Mr. Blackwell's] "observation that there was nothing in Ohio law, nothing in Federal law that precluded you from playing that role" (p. 56, lines 1246-1248), he nevertheless asserts that "it seems to me that a reasonable secretary of state, a reasonable chief election officer might have thought that there was an appearance of a conflict of interest." (p. 56, lines 1250-1252).

Mr. Davis is simply wrong on this point. Ohio law provides that "[a] potential conflict of interest exists if the private interests of the person, as indicated by the person's disclosure statement, might interfere with the public interests the person is required to serve in the exercise of the person's authority and duties in the person's office or position of employment." [Ohio Rev. Code §102.02 (2008)] The "public interests the [Secretary] is required to serve in the exercise of the [Secretary of State's] office [as the Ohio's Chief Elections Officer]" are defined by a *process* in which the power to administer elections is divided functionally and politically between the Secretary and the eighty-eight county Boards of Election. The functional and bipartisan separation of powers built into the system

gives the counties and opposing political parties every incentive to challenge *any* exercise of the Secretary's authority they view as inconsistent with their own interests.

A "reasonable person" acquainted with Ohio elections law would therefore understand that bipartisan county boards of election bear primary responsibility for day-to-day and election-day administration of elections, voter registration, ballot distribution, acquisition and maintenance of voting equipment, and tabulation of votes on Election Day. A "reasonable person" would also understand that the bipartisan distribution of powers ensures that citizens of both parties have an equal right, opportunity, *and incentive* to ensure the integrity of every election *and the validity of each ballot*. If their interests are threatened, they will sue, and the courts will respond. The geographic distribution of powers also ensures that each of Ohio's eighty-eight (88) counties and their respective Boards of Election will sue if any act by the Secretary in his or her capacity as Ohio's Chief Elections Officer is viewed by the counties as a threat to their authority to administer elections. Checks and balances are built into the system.

Specific Questions by Mr. Davis:

Page	Lines	Topic
54	**1184-1193**	Mr. DAVIS: "…Just by way of reference, in the 2004 campaign cycle, were there any other secretaries of state who were Bush honorary campaign Chairs in the whole country? Do you know of any?"
54	**1194-1201**	Mr. BLACKWELL. I would imagine the secretaries of state, attorneys general who were making calls on the elections across the country, yes.

Documentation of the role that other Secretaries of State played in the presidential campaigns of 2004 and prior years is not readily accessible. A review of materials that are readily available shows that the following state officials with "significant roles" in the elections process (p. 55, lines 1220-1231) held key positions in the campaigns of the following presidential candidates.

Year	State	Name	Position	Role	Candidate	Office
2000	Florida	Katherine Harris	Secretary of State	Honorary campaign chair	George W. Bush	President
2000	Florida	Bob Butterworth	Attorney General	Campaign Chair	Al Gore	President
2000	New Mexico	Rebecca Vigil-Giron	Secretary of State	Active in campaign	Al Gore	President
1996	Florida	Sandra Mortham	Secretary of State	National Chair	Phil Gramm	President
1996	Illinois	George Ryan	Secretary of State	State Chair	Phil Gramm	President

1988	Arkansas	Bill Clinton	Governor	National co-chair	Michael Dukakis	President
1988	Iowa	Elaine Baxter	Secretary of State	National co-chair	Michael Dukakis	President
1988	New York	Mario Cuomo	Governor	National co-chair	Michael Dukakis	President
1988	Ohio	Sherrod Brown	Secretary of State	Campaign Coordinator	Bruce Babbitt	President

UNITED STATES ELECTION
ASSISTANCE COMMISSION

TESTIMONY

OF

HONORABLE GRACIA HILLMAN
U.S. ELECTION ASSISTANCE COMMISSION

BEFORE THE

HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION,
CIVIL RIGHTS AND CIVIL LIBERTIES

THURSDAY, JULY 24, 2008

U.S. Election Assistance Commission
1225 New York Ave., NW – Suite 1100
Washington, DC 20005

Good afternoon Chairman Nadler, Ranking Member Franks, and Members of the Subcommittee. I am pleased to be here this afternoon on behalf of the U.S. Election Assistance Commission (EAC) to discuss election administration, the challenges that our election process faced in November 2004 and the work that has been done to prepare for the upcoming Presidential election, and the role that EAC plays in supporting State and local governments in conducting Federal elections.

INTRODUCTION

EAC is a bipartisan commission consisting of three members: Rosemary Rodriguez, Chair; Donetta Davidson, Vice Chair and Gracia Hillman. There is currently one vacancy on the Commission. EAC is an independent Federal agency that guides and assists States in the effective administration of Federal elections. In doing so, EAC has focused on fulfilling its obligations under the Help America Vote Act of 2002 (HAVA) and the National Voter Registration Act of 1993 (NVRA). EAC works to identify potential election administration issues and to provide States with tools that they can use to avoid problems and serve their citizens by holding accurate and reliable elections.

Our country will choose our next President in November. The primary season was marked by a true contest to obtain the party nominations and record turn out of voters who were not only engaged in the process, but also excited about making their voices heard. The question is: are these the only differences that we will see in comparison to the 2000 and 2004 Presidential elections? Over the past eight years, we have subjected our electoral system to unprecedented scrutiny. Potential problems were identified related to the election technology and election administration as evidenced by complaints of stolen votes, lax security in electronic voting systems, long lines at polling places, inconsistent use of provisional ballots, and inequitable allocations of voting machines.

Left unresolved, many of these issues could arise in the 2008 general election. During this primary season, voters continued to encounter poorly designed ballots. We also saw that if election jurisdictions underestimated the interest of the voters, the result was too few ballots and not enough poll workers to assist voters. Provisional balloting could also be an issue if election officials are not prepared for the volume of provisional voters.[1]

EAC has worked to fulfill Congress' mandate to assist States with the administration of election for Federal office, including distribution of funding made available under HAVA. EAC has been engaged to help the election officials of our country ready themselves for the primaries and upcoming Presidential election. EAC has issued a variety of materials aimed at assisting election officials with important issues like ballot design, poll worker recruitment and training, managing

[1] In 2004, 1.9 million people cast a provisional ballot and 1.2 million were counted. Similarly, in the mid-term elections of 2006, nearly 800,000 provisional ballots were cast and approximately 630,000 were counted. The number of provisional ballots cast in the upcoming Presidential election is likely to be similar to the numbers in the 2004 Presidential election.

effective elections, selecting voting equipment that fits the needs of each State and its electorate, and managing those systems to avoid malfunctions or apparent problems with their operation. Below I will discuss these efforts and products in detail and discuss current projects of the EAC that will continue to assist States with their election administration.

HELP AMERICA VOTE ACT IMPLEMENTATION

The 2004 Presidential election was conducted during the implementation of the Help America Vote Act (HAVA). HAVA required that States upgrade their voting systems, implement provisional voting, post information for voters at the polling place, institute a statewide voter registration list, and verify voter registration applicants either at the time of registration or when they vote for the first time. However, HAVA allowed States until January 1, 2006 to meet the voting system, statewide voter registration database and verification requirements.[2]

Thus, as of the date of the Presidential election in 2004, States had to have a program for provisional voting, voter information postings, and a few States were using voter registration databases. The days leading up to and following the 2004 Presidential election were plagued with litigation, primarily revolving around the States' implementation of the provisional voting requirement as required by HAVA. However, decisions related to when a provisional ballot was validly cast revolved around State law and whether voters were eligible if they cast provisional ballots outside of their precincts. State laws and procedures implementing provisional voting were generally upheld resulting in a patchwork of methods for casting and counting these ballots.

A good number of States had purchased and employed electronic voting systems in the 2004 Presidential election. This switch from paper-based systems to computerized systems happened quickly. Although electronic voting was not new, its more widespread use called into question the security and reliability of the available systems. Reports were written by computer scientists and even by the Government Accountability Office[3] challenging the internal security and security protocols or processes employed by election officials using electronic voting equipment.

Long lines and other polling place procedures also caused concern during the 2004 Presidential elections. In many cases, long lines were blamed on the inequitable and inefficient allocation of voting equipment to polling places that had a high turn out of voters. And, complaints arose of improper or unjustified polling place challenges to the eligibility of voters. While these issues are not expressly covered by one of the election reforms required by HAVA, HAVA does encourage EAC to study election administration issues. As such, in this testimony, I will discuss the work that EAC has done to assist States with these types of polling place problems.

[2] The initial compliance date for the statewide voter registration databases and verification of voter registration applications was January 1, 2004; however, most states sought and obtained a waiver of compliance until January 1, 2006.
[3] See GAO Report 05-956.

The 2008 Presidential election will mark the first Presidential election in which all States should have implemented HAVA's election reforms. All States should have improved their voting systems, including providing accessible voting units for those voters who are physically and/or visually disabled. All States should have a functioning statewide database - linked to other State and Federal databases for verification purposes – that contains the name of every eligible, registered voter in the State. All States should have a mature program for provisional voting and have polling place signs that provide information to voters about their rights and the voting process. The very fact that these reforms have been implemented in most states will alleviate some of the problems that we saw in 2004. However, they have also resulted in a new set of challenges related to election administration post-HAVA. One example is how to determine whether information on the statewide voter registration database "matches" information in other databases for purposes of verification.

Over the past four years, EAC has conducted research, collected data regarding elections and election administration, and, from these, developed best practices, election management tools, and processes that election administrators can use to address many of the problems that surfaced during the 2004 Presidential as well as issue that arose during the implementation of HAVA's election reforms. Below, I will discuss in greater detail the products that EAC developed and made available to election administrators.

VOTING SYSTEMS SECURITY

Voting system security requires an accurate, reliable, accessible and auditable voting system. There are various opinions on what constitutes accurate, reliable, accessible and auditable, but one clear source is section 301 of HAVA. HAVA establishes a number of requirements for voting systems, including that the system:

- Allow the voter the ability to change his or her selections prior to casting a vote;
- Notify the voter of an overvote and the consequences of casting an overvote;
- Provide a permanent paper record of the election that is auditable;
- Provide accessibility to individuals with disabilities including persons who are blind or visually impaired;
- Provide accessibility to persons for whom English is not their first language when required by Section 203 of the Voting Rights Act; and
- Conform to the error rate as established in the 2002 Voting System Standards developed by the Federal Election Commission.

See HAVA Section 301; 42 U.S.C. Section 15481. This section requires that all voting systems used in an election for Federal office meet or exceed these requirements. States can use HAVA funding to purchase voting systems that meet or exceed these requirements.

In addition, HAVA required EAC to develop guidelines for testing voting systems and required EAC to establish a program to test voting systems using federally accredited laboratories. These guidelines and testing and accreditation processes establish a means to determine whether voting

systems meet the base-line requirements of HAVA and the more descriptive and demanding standards of the voluntary voting system guidelines developed by EAC. This process provides assurance to election officials and members of the public that the voting systems that they use have met the requirements of a Federal testing process.

Voluntary Voting System Guidelines (VVSG)

One of EAC's most important mandates is the testing, certification, decertification and recertification of voting system hardware and software – a program in which the States voluntarily participate. Fundamental to implementing this key function is the development of updated voluntary voting system guidelines, which prescribe the technical requirements for voting system performance and identify testing protocols to determine how well systems meet these requirements. HAVA dictates that EAC along with its Federal advisory committee, the Technical Guidelines Development Committee (TGDC), and the National Institute of Standards and Technology (NIST), work together to develop voluntary testing standards.

The first set of national voting system standards was created in 1990 by the Federal Election Commission (FEC). In 2002, FEC updated the standards, and HAVA mandated that the EAC develop a new iteration of the standards—which would be known as the Voluntary Voting System Guidelines (*VVSG*)—to address advancements in information and computer technologies. On December 13, 2005, EAC adopted the first iteration of the Voluntary Voting System Standards (VVSG). Before the adoption of the VVSG, the EAC conducted a thorough and transparent public comment process. After conducting an initial review of the draft *VVSG*, EAC released the two-volume proposed guidelines for a 90-day public comment period; during this period, the EAC received more than 6,000 comments. Each comment was reviewed and considered before final adoption. The agency also held public hearings about the *VVSG* in New York City, NY, Pasadena, CA, and Denver, CO.

The *VVSG* was an initial update to the 2002 Voting System Standards focusing on improving the standards for accessibility, usability and security. Since the adoption of the 2005 VVSG, TGDC and NIST have been working to revise that version and to completely review and update the 2002 Voting System Standards that were developed by the FEC. EAC received TGDC's recommendations for the next iteration of the VVSG in September 2007. EAC posted the recommendations for a 120-day comment period and extended it to receive comments until May 5, 2008. During this time, EAC hosted meetings of its Board of Advisors and Standards Board so that they could be briefed on, thoroughly review, and comment on the recommendations from TGDC. EAC also conducted round-table reviews of the TGDC's recommendations that included voting system manufacturers, testing laboratories, election officials, advocacy groups, and an interdisciplinary round-table with representatives from each of these groups. EAC has received and is reviewing 2693 comments to the recommendations submitted by the TGDC. These comments are available for public review on EAC's Web site, www.eac.gov.

EAC estimates that 35 States require testing to standards promulgated by the Federal government (2002 VSS or 2005 VVSG). While almost every State has statutes or regulations that mandate the testing or approval of the voting systems to be used in that State, many of the statutes or regulations are ambiguous as to whether EAC Certification is required or whether the State will be conducting it own certification testing. EAC's estimate is based upon its reading and interpretation of those statutes and regulations.

In addition to the work that has been done on the VVSG, NIST is working to develop a uniform set of test methods that can be applied to the testing of voting equipment. After the completion of these uniform test methods, every accredited lab will use the same test to determine if a voting system conforms to the *VVSG*. This is a long and arduous process as test methods must be developed for each type and make of voting system. Work began in 2007 on these methods, but will likely take several years to complete.

Testing and Certification and Laboratory Accreditation Programs

Accreditation of Voting System Testing Laboratories

HAVA Section 231 requires EAC and NIST to develop a national program for accrediting voting system testing laboratories. The National Voluntary Laboratory Accreditation Program (NVLAP) of NIST conducts a technical evaluation of testing laboratories and performs periodic re-evaluation to verify that the labs continue to meet the accreditation criteria. When NIST has determined that a lab is competent to test systems, the NIST director recommends to EAC that a lab be accredited. EAC makes the determination to accredit the lab based upon NIST's recommendation and its own review of several non-technical factors such as the lab's financial stability, policies concerning conflict of interest and other policies and procedures governing management and record retention. EAC issues an accreditation certificate to approved labs, maintains a register of accredited labs, distributes the information to the public, and posts this information on its website.

EAC has accredited four laboratories under the EAC Testing and Certification Program. The accredited labs are:

- iBeta Quality Assurance
- SysTest Labs, L.L.C.
- InfoGard Laboratories, Inc.
- Wyle Laboratories

One lab has completed NVLAP review, has been recommended by NIST, and is currently undergoing EAC's non-technical review:

- Ciber Inc.

Two other labs have applied for accreditation and are currently being reviewed by NVLAP:

- Aspect Labs

- Atsec Information Security Corporation

EAC has developed a program manual for its laboratory accreditation program, outlining the procedures and program requirements for laboratories seeking and maintaining accreditation by the EAC. One point of emphasis of this manual and the laboratory accreditation program is ensuring the independence of EAC-accredited testing laboratories by identifying and prohibiting conflicts of interest. EAC posted this manual for public review and comment through April 4, 2008. The manual was adopted by the Commission at its July 21, 2008 public meeting.

Voting System Certification

On December 7, 2006, EAC adopted its Voting System Certification Program, which became effective on January 1, 2007. Since that time, EAC has registered 12 manufacturers to participate in its testing and certification program:

- Unisyn Voting Solutions
- Premier Election Solutions, Inc.
- Dominion Voting Systems Corp.
- Hart InterCivic, Inc.
- Advanced Voting Solutions, Inc.
- MicroVote General Corp.
- Avante International Technology, Inc.
- Election Systems & Software, Inc.
- Sequoia Voting Systems, Inc.
- TruVote International
- Precise Voting LLC
- AutoMark Technical Systems LLC

Manufacturer registration is required prior to a manufacturer submitting a system for testing. Once the manufacturer is registered, it may submit systems for testing to an EAC-accredited testing laboratory along with a test plan for the testing of that system. EAC has received five draft test plans for the testing of voting systems and has approved two of those plans:

- MicroVote General Corporation, EMS Voting System v.4.0.0. **(APPROVED)**
- Premier Assure 1.2 **(APPROVED)**
- Dominion Voting Systems, Democracy Suite v.1.0.0.
- Election System & Software, Unity Voting System v.3.2.0.0 and Unity 4.0

Once systems are tested, reports from the laboratory's assessment are provided to EAC for review by EAC technical reviewers. If the report is in order and the system is in conformance with the applicable voting system standards or guidelines, the technical reviewers will recommend that EAC grant the system certification. EAC's executive director makes the final decision regarding certification.

Once certified, a system may bear an EAC certification sticker and may be marketed as having obtained EAC certification. The EAC process also allows for assessment of quality control, field monitoring, decertification of voting systems, and enhanced public access to certification information. For more information concerning EAC's Voting System Testing and Certification Program, see the program manual for this program, which is available on the EAC Web site, www.eac.gov. Also available on the Web site is a list of registered manufacturers, test plans (draft and approved), systems undergoing testing, and related correspondence

ELECTION ADMINISTRATION SUPPORT

HAVA requires EAC to assist States with the administration of Federal elections and establishes EAC as a national clearinghouse of election information. To fulfill this mandate, EAC makes research available on a range of issues including best practices in election administration, hours and places for voting, and election data. This information is presented to the election community and to the public through the EAC's website (www.eac.gov) as well as through formal reports on studies and data collections.

Management Guidelines

EAC assists States and local election jurisdictions by providing information about successfully managing all of details surrounding the administration of elections. In 2005, EAC began work on a comprehensive set of management guidelines, collaborating with a group of experienced State and local election officials to provide subject matter expertise and to help develop the guidelines. The project focuses on developing procedures related to the use of voting equipment and procedures for all other aspects of the election administration process. These publications are a companion to the *VVSG* and assist States and local election jurisdictions with the appropriate implementation and management of their voting systems.

Eleven *Quick Start Guides* have been distributed to election officials throughout the nation. These guides cover topics such as introducing a new voting system; ballot preparation; voting system security; poll worker training; voting system certification; acceptance testing; absentee voting and vote by mail; contingency and disaster planning; media and public relations; managing change in an election office; and polling places and vote centers. These guides are available at www.eac.gov.

Effective Ballot and Polling Place Sign Design

A challenge that continues to confront election officials throughout the country is designing ballots that are understandable, intuitive, user-friendly and affordable. EAC received requests from of its Board of Advisors and election officials throughout the country to provide sample ballots and polling place signs that could be adapted and used by election jurisdictions throughout the country.

At its June 14, 2007 public meeting, EAC adopted "Best Practices for Effective Designs in Election Administration." This report includes instructions, guides and suggestions for effective design, as well as sample signs and ballots that can be adapted and used by election administrators. Some examples of those designs follow.

EAC has distributed this report to 5600 election officials and published it on the EAC Web site. Ballot and polling place design templates that can be customized also have been distributed to election officials. EAC presented this research at a convention of election officials (IACREOT) last summer and made a similar presentation at the April 2008 meeting of Election Center.

Poll Worker Recruitment

A large, trained pool of election workers is critical to the effective and efficient administration of elections. The average age of poll workers continues to rise and the number of returning workers falls each year, so one of the EAC's top priorities is to help election officials recruit, train, and retain poll workers. This effort is part of two projects: one focused on traditional poll workers and one specifically aimed at recruiting college students as poll workers.

EAC has issued two manuals or guidebooks that can be used by election administrators to recruit, train and retain poll workers. "Successful Practices for Poll Worker Recruitment, Training and Retention" and "A Guidebook for Recruiting College Poll Workers." These guidebooks were created to directly assist local election officials with maintaining their poll worker pool, but also provide educational tools for State and local governments about the types of resources necessary to find and keep skilled poll workers. Similarly, it can serve as a reminder to the public at large of the need for volunteers to serve this very important function. EAC has also compiled State laws and regulations governing the selection, training and service of poll workers.

Both guidebooks are available on EAC's Web site, www.eac.gov.

Language Accessibility Program for Voters

EAC's Language Accessibility Program[4] was developed to ensure the accessibility of voting, registration, polling places, and voting equipment to all voters, including Native American and Alaska Native citizens and voters with limited proficiency in the English language. EAC provides State and local election officials with the tools that they need to write ballots and election materials in the languages that the voters of this country understand.

EAC has already produced a Spanish Glossary of Key Election Terminology, which translates more than 1,800 terms from Spanish to English and from English to Spanish. This glossary was distributed to election officials throughout the nation, and it continues to be one of the most requested resources produced by the EAC. Also, the EAC recently completed work on glossaries in Chinese, Japanese, Korean, Tagalog, and Vietnamese. These glossaries are available on EAC's Web site and in hard copy.

The EAC Web site also contains a comprehensive *En Español* section that includes information about registering to vote, contacting local election officials, and resources for military and overseas voters. The National Voter Registration Form is also available in Spanish on the EAC Web site.

Voter Hotlines

In 2007, the EAC commissioned a survey of election officials and a report on government-sponsored voter hotlines. In total, 1,466 election offices took the survey— one Federal agency, 27 State election offices, and 1,438 local-level offices, which represents a 25 percent response rate of the 5,920 offices that were invited to participate.

[4] Our efforts were recognized in the General Accountability Office report called *Bilingual Voting Assistance: Selection Jurisdictions' Strategies for Identifying Needs and Providing Assistance*. GAO described the activities of the EAC's Language Accessibility Program, and this report will be a valuable resource to election officials as we work together to serve all voters.

As one might expect, the larger jurisdictions are more likely to have voter hotlines. They are also more likely to have dedicated hotlines as opposed to operating a hotline through the election office's main telephone number. Most questions to hotlines are inquiries about registration status or polling place location, but the information offered by election officials through voter hotlines ranges from polling place hours to absentee and UOCAVA ballot status to clarifications on election laws to complaints, etc. One in four hotlines is completely automated and a large majority of jurisdictions with operator-answered hotlines say that they use a non-structured approach to respond to callers' questions. Half of the localities that responded to the survey indicated that their hotline services are accessible to the hearing impaired. However, 70% of those who responded to the survey indicated that their hotlines are only available in English.

In addition, the report offers suggestions to State and local election officials as they develop and enhance their own voter hotlines:

- Make sure that the hotline operator has access to the latest updated information.
- If an election official is going to supplement the regular staff during peak seasons, bring the temporary employees in early enough to assure time for a high-quality training program.
- Stress-test the lines prior to Election Day and install a backup generator to maintain the telephone computer bank in the event of loss of power.

Voter Registration Databases

In 2005, EAC issued guidance to the States on developing their statewide voter registration databases. The guidance gave information on what technological structures were acceptable, the frequency of verifying information in the database, and some basic information on coordinating information in the database with other State and Federal databases and resolving conflicts that may exist.

EAC also has several long term projects that will help election officials with their use of the HAVA-mandated statewide voter registration lists. EAC is working on a study on the use of social security numbers in voter registration. This is one of the required HAVA studies to answer questions related to the use of the last four digits of a person's social security number to verify his or her identity.

In addition, EAC is working with the National Academy of Sciences (NAS) to build on EAC's previous guidance on statewide voter registration lists. NAS is conducting a study for EAC on the interoperability of statewide voter registration lists. This study will focus on:

- Technical approaches, processes and safeguards associated with identifying and removing duplicate registrations;
- Technical approaches and procedures for sharing voter registration data across state systems; and

- Security issues that arise when sharing data among states, and technical and procedural approaches for addressing them.

An interim report was issued in April 2008. The interim reports made some initial findings regarding short term actions that can be taken to improve public education and information dissemination and administrative process and procedures related to the statewide voter registration databases. In addition, several long term actions for future improvements were offered.

Short-term Actions – Public Education and Dissemination of Information

- Raise public awareness about the legibility and the completeness of voter registration card information. Jurisdictions could take some or all of the following specific steps:
  - Emphasize in the instructions for filling out voter registration forms the importance of legibility and completeness (for example, "Please print all responses; if your answers are illegible, your application may be mis-entered, rejected or returned to you.").
  - Conduct media campaigns emphasizing the importance of legibility and completeness in the information provided on voter registration forms.
  - Coordinate with third-party voter registration groups and public service agencies, emphasizing the need for their field volunteers to attend to legibility and completeness as they distribute and/or collect registration materials.

Short-term Actions – Administrative Processes and Procedures

- Resubmit match queries if the response returned from the Social Security Administration or department of motor vehicles is a nonmatch.
- Provide human review of all computer-indicated removal decisions.
- Improve the transparency of procedures for adding voters and for list maintenance.
- Use fill-in online registration forms.
- Perform empirical testing on the adequacy of processes for adding to and maintenance of lists.
- Take steps to minimize errors during data entry.
- Allow selected individuals to suppress address information on public disclosures of voter registration status.
- Encourage (but do not require) entities sponsoring voter registration drives to submit voter registration forms in a timely manner to reduce massive influxes at the registration deadline.

Long-Term Actions for Possible Future Improvements

- Develop and promote public access portals for online checking of voter registration status.
- Encourage/require departments of motor vehicles as well as public assistance and disability service agencies to provide voter registration information electronically.

- Encourage/require departments of motor vehicles, public assistance and disability service agencies, tax assessors, and other public service agencies of state and local governments in their communications with the public to remind voter to check and update their information.
- Improve matching procedures.
- Establish a software repository of tested matching algorithms.
- Provide voter registration receipts to improve administrative processes.
- Allow voters to register and to update missing or incorrect registration information online if a signature is already on file with a state agency.
- Develop procedures for handling disenfranchisement caused by mistaken removals from voter registration lists.
- Improve the design of voter registration forms.

This study is slated to be completed in December 2009 and a final report will be issued at that time.

Other Ongoing Research

In developing and finalizing its research efforts, EAC uses the expertise and resources of its Board of Advisors and Standards Board. These boards are consulted regarding their thoughts on what research and study are needed to assist election administrators and the public. At the culmination of a research effort, EAC also calls upon its Federal advisory committees to provide comment on its various research and study efforts. The public can view the boards' comments on the EAC Web site in the Virtual Meeting Room. In addition, interested persons can email the board members concerning the various projects and their comments. In addition, minutes of meetings, resolutions, charters, and rosters of membership for each of the boards can be found on EAC's Web site, www.eac.gov.

EAC has several ongoing research efforts that will assist States in providing information to voters and with better serving voters. The first is a study of Web sites or on-line portals that voters can use to check to see if they are registered to vote and if so where they vote. As a part of its 2005 guidance on statewide databases, EAC encouraged States to develop Web-based tools to allow voters to verify their registration. This research effort will follow up on that guidance by analyzing those sites that are now available and providing successful practices for making those sites user-friendly and secure.

EAC is nearing completion of a study on alternative voting methods. The study reports on case studies of various States and local jurisdictions that are conducting voting using unique or innovative methods such as vote centers, vote by mail, early voting, elections on days other than Tuesday, and making Election Day a holiday. This study will be posted on the EAC Virtual Meeting Room for comment by its Federal advisory committees on August 4 through August 8 and will be finalized after consideration of the comments provided by these boards.

EAC is also working with NIST to adopt guidelines for electronic voting to support voting by military and overseas voters. These guidelines are being developed to assist the Department of Defense (DoD) in developing a voting system to serve these voters. EAC has entered into Memoranda of Understanding with both NIST and DoD, Federal Voting Assistance Program, to facilitate this work.

CONCLUSION

Conducting accurate and reliable elections is key to ensuring public confidence in our electoral system. The implementation of HAVA's election reforms has already made great strides toward improving election administration in this country. However, it is critical to employ the best election administration practices possible when it comes to our democracy. EAC is here to help States by providing research, tools, and solutions that State and local governments can use to better serve their voters. The information collected by EAC through its research and through its election day survey about how, when, and where we vote will also provide valuable insight to election officials as they work to make improvements at the local level.

EAC appreciates the opportunity to provide this testimony regarding election administration. If you have any questions, I will be happy to address them.

FY 2001 HOUSING COUNSELING GRANTS
FY 2001 FUNDS AWARDED BY HEADQUARTERS

MASSACHUSETTS

The Housing Partnership Network (HPN)
Boston, MA
$1,130,496
HPN proposed to continue and expand the housing counseling activities in the area of: increasing homeownership among low and moderate income households, especially minority households and traditionally underserved populations; to ensure that households have the information and support to maintain their homes and build equity for the future; and to support neighborhood stabilization and revitalization by increasing responsible single-family and multiplex homeownership.

HPN has successfully administered the housing counseling program since 1995 and through its network of housing partnerships has provided housing counseling in 18 states across the country. HPN target their housing counseling efforts to traditionally underserved populations particularly very low to low income and minority households.

Citizens' Housing and Planning Association (CHAPA)
Boston, MA
$250,000
The Citizens' Housing and Planning Association and its affiliates have a long history of tailoring their services to meet the needs of low and moderate income households in the communities they serve which includes Connecticut, Maine, Massachusetts, Rhode Island and Vermont. CHAPA's affiliates provide counseling to individuals and families from a variety of racial and ethnic backgrounds including recent immigrants who speak a primary language other than English.

CHAPA's counseling services to its clients cover all aspects of purchasing a home, post-purchase counseling and education which focuses on sustaining homeownership, delinquency and default counseling. In addition, CHAPA has conducted extensive outreach to low and moderate income households to participate in a homebuyer program by working with local churches, service organizations, government agencies and others concentrating their efforts on those people traditionally underserved in the homeownership market.

WASHINGTON, DC

Natioual Council of La Raza (NCLR)
Washington, DC
$1,081,344

NCLR proposes to continue to provide housing counseling to low and moderate income Hispanics that lack knowledge about the homeownership process and are unaware of the resources and programs that are available to first-time homebuyers.

NCLR is a private, nonprofit, nonpartisan organization established in 1968 to reduce poverty and discrimination and improve life opportunities for Hispanic Americans. NCLR identified 16 housing counseling affiliates and indicated more than 230 formal affiliates who together serve 39 states, Puerto Rico and the District of Columbia along with a network in excess of 20,000 groups and individuals nationwide reaching more than three million Hispanics annually.

The Congress of National Black Churches, Inc. (CNBC)
Washington, DC
$712,704
CNBC proposes to guide its affiliate organizations in providing a comprehensive housing counseling plan that will further address the needs of the underserved populations in urban and rural settings. CNBC also proposes to promote fair housing by removing barriers to information that deter many Americans from seeking, buying, insuring or maintaining a home in a neighborhood of their choice; improve the quality, effectiveness and availability of pre/post-purchase counseling and education by delivering the services within the communities most in need of help and foster a greater coordination among the local real estate brokers, lenders and providers of homeownership counseling and education services.

CNBC has 26 years of related housing and community experience which includes 5 years of managing housing counseling agencies. CNBC has successfully initiated a training program to provide training to churches and faith based organizations to provide homebuyer education and one-on-one counseling in their communities. In the year 2000, CNBC's housing counseling and related HUD activities were recognized by HUD with a "Best Practice" award.

Neighborhood Reinvestment Corporation (NRC)
Washington, DC
$1,155,072
NRC was created by Congress in 1978 to provide training for community-based housing counselors throughout the United States. Each year, hundreds of housing counselors serving communities through out the nation receive training through NRC. The training institute will provide program oversight, training and management while its 82 affiliates provide housing counseling in some of the following areas: homebuyer education; pre-purchase homeownership; post-purchase; mortgage delinquency and default resolution; marketing and outreach in targeted areas; special needs for senior citizens, renter assistance counseling and fair housing assistance.

NEW YORK

National Urban League (NUL)
New York, NY
$1,155,072

NUL has been a housing counseling provider for over 30 years. To assist in expanding homeownership opportunities, NUL and its affiliates will conduct interviews, information referral, hold 2 hour homebuyer education seminars and provide 16 to 20 hours of individual pre-purchasing counseling sessions.

Recently their Hartford Urban League along with several local banks have developed flexible underwriting criteria that enabled 300 loans to be made to low and moderate income residents in Hartford, Connecticut. NUL has been working with Fannie Mae to develop a mortgage instrument flexible enough to accommodate the lower income in other areas. The Tucson Urban League office was a model for this program that earned NUL recognition in the year 2000 HUD "Best Practices" award.

PENNSYLVANIA

Housing Opportunities, Inc.(HOI)
McKeesport, PA
$1,056,768
HOI proposes to provide housing counseling agencies with resources to serve the unique housing needs of their community. HOI has been a service provider for 26 years and its affiliates have counseling experience in family budgeting, Home Equity Conversion Mortgage (HECM) eligibility and guidelines for senior citizens, loss mitigation, money management, foreclosure prevention, pre-purchase, and rental counseling.

In addition, HOI's loss mitigation, delinquent and default product was selected by HUD as one of Pittsburgh, Pennsylvania's "Best Practices" agency and subsequently chosen as one of HUD's 50 "Best Practice" award recipients nationwide.

Acorn Housing Corporation (AHC)
Philadelphia, PA
$1,032,192
AHC has developed a program that targets low and moderate income communities in each of the cities it serves which will enable its affiliates to work closely with families and individuals to help them qualify for a new or refinance an existing mortgage, qualify for home improvement loans, mortgage or develop delinquency payment strategy.

AHC has been providing housing counseling to low and moderate income and minority buyers since 1986 and has opened 26 housing counseling offices across the United States.

VIRGINIA

Catholic Charities USA
Alexandria, VA
$971,280
Catholic Charities USA and its affiliates will continue providing housing counseling services that include: outreach services to increase the awareness of homeownership opportunities;

homebuying education for first-time homebuyers and the Home Equity Conversion Mortgage (HECM) for eligible persons 62 or older.

Catholic Charities USA is a religiously affiliated organization with a network of 180 main diocesan and over 1,400 branch agencies. Its housing counseling program which has been in existence since 1994, aim to reduce poverty, support families and provide quality counseling service to all people in need without regard to religious, racial, ethnic or cultural background.

MARYLAND

National Foundation for Credit Counseling (NFCC)
Silver Spring, MD
$1,155,072
NFCC proposes to continue to provide comprehensive counseling and related services to meet the needs of local people in the communities that member affiliates serve, which will include: Homebuyer education; pre-purchase homeownership and post-purchase mortgage delinquency and default resolution; Home Equity Conversion Mortgage (HECM); loss mitigation; outreach initiatives; renter assistance and budgeting and credit counseling. NFCC, founded in 1951, is the nation's oldest and largest non-profit organization dedicated to budgeting and credit education and housing counseling.

TENNESSEE

West Tennessee Legal Services, Inc. (WTLS)
Jackson, TN
$250,000
WTLS has been a HUD-Certified Housing Counseling Agency since 1990 and have traditionally performed comprehensive housing counseling services through out Tennessee, Alabama, Georgia, Mississippi and 90 counties in Kentucky. Services provided include: pre-purchase counseling to first-time homebuyers; counseling to persons 62 years and older on the availability of funds through Home Equity Conversion Mortgage (HECM); pre-rental counseling with emphasis upon HUD and rural housing rent subsidy programs; promote awareness of and education concerning rights and remedies to persons who experience discriminatory housing practices; assist tenants and homeowners with meeting their responsibilities of tenancy and of homeownership.

WTLS was awarded a "Best Practice" award by HUD in 1999 and the year 2000 for its housing counseling methodologies. WTLS proposes to continue to promote and facilitate homeownership through education and outreach and to assist tenants and homeowners with meeting the responsibility of tenancy and of homeownership.

U. S. Department of Housing and Urban Development

FY – 2003 ROSS Resident Service Delivery Models - Family

	Applicant Name	Amount Funded
Alabama		
	Mobile Housing Board	$500,000
	State Subtotal:	$500,000
Arizona		
	White Mountain Apache Housing Authority	$350,000
	State Subtotal:	$350,000
California		
	City of Los Angeles Housing Authority	$500,000
	Housing Authority of the City of Oxnard	$250,000
	San Diego Housing Commission	$350,000
	State Subtotal:	$1,100,000
Colorado		
	Housing Authority of the City and County of Denver	$350,000
	Jefferson County Housing Authority	$95,709
	State Subtotal:	$445,709
Connecticut		
	Housing Authority of the City of Norwalk	$250,000
	Hartford Housing Authority	$248,079
	Southfield Village Resident Council, Inc.	$100,000
	State Subtotal:	$598,079
District of Columbia		
	Barry Farm Resident Council, Inc.	$100,000
	Acorn Tenant Union- Training & Organizing Project	$230,500
	Acorn Tenant Union - Training & Organizing Project	$278,636
	State Subtotal:	$609,136
Florida		
	Housing Authority of the City of Tampa	$350,000
	State Subtotal:	$350,000
Georgia		
	Housing Authority Cordele	$250,000
	State Subtotal:	$250,000
Iowa		
	Iowa City Housing Authority	$250,000
	State Subtotal:	$250,000
Illinois		
	Decatur Housing Authority	$250,000
	State Subtotal:	$250,000
Indiana		
	Indianapolis Housing Agency	$350,000
	Beechwood Gardens Resident Management Corporation	$100,000
	State Subtotal:	$450,000

U. S. Department of Housing and Urban Development

FY – 2003 ROSS Resident Service Delivery Models - Family

	Applicant Name	Amount Funded
Kentucky		
	Louisville Metro Housing Authority	$500,000
	Housing Authority of Somerset	$250,000
	Housing Authority of Owensboro	$250,000
	Housing Authority of Hopkinsville	$250,000
	Housing Authority of Bowling Green	$250,000
	State Subtotal:	$1,500,000
Massachusetts		
	Cambridge Housing Authority	$350,000
	State Subtotal:	$350,000
Minnesota		
	Public Housing Agency of The City of St. Paul	$350,000
	State Subtotal:	$350,000
Missouri		
	St. Louis Housing Authority	$350,000
	State Subtotal:	$350,000
Nebraska		
	Omaha Housing Authority	$350,000
	State Subtotal:	$350,000
New Jersey		
	Housing Authority of the City of Perth Amboy	$245,280
	State Subtotal:	$245,280
New Mexico		
	Pojoaque Housing Corporation	$250,000
	State Subtotal:	$250,000
New York		
	Albany Housing Authority	$250,000
	Binghamton Housing Authority	$250,000
	State Subtotal:	$500,000
Ohio		
	Youngstown Metropolitan Housing Authority	$349,920
	State Subtotal:	$349,920
Oklahoma		
	Oklahoma City Housing Authority	$348,652
	State Subtotal:	$348,652
Oregon		
	Housing Authority of Clackamas	$250,000
	Housing Authority of Portland	$349,984
	State Subtotal:	$599,984
Pennsylvania		
	Housing Authority of the County of Beaver	$350,000
	State Subtotal:	$350,000
Rhode Island		
	Housing Authority of the City of Providence	$350,000
	State Subtotal:	$350,000

U. S. Department of Housing and Urban Development

FY – 2003 ROSS Resident Service Delivery Models - Family

	Applicant Name	Amount Funded
Tennessee		
	Memphis Housing Authority	$500,000
	State Subtotal:	$500,000
Texas		
	Fort Worth Housing Authority	$350,000
	Temple Housing Authority	$250,000
	State Subtotal:	$600,000
Utah		
	Housing Authority of Salt Lake City	$250,000
	State Subtotal:	$250,000
Virginia		
	Portsmouth Redevelopment & Housing Authority	$350,000
	Danville Redevelopment and Housing Authority	$250,000
	Danville Resident Management Council, Inc.	$300,000
	State Subtotal:	$900,000
Washington		
	Kitsap County Consolidated Housing Authority	$250,000
	State Subtotal:	$250,000
Wisconsin		
	Housing Authority of the City of Milwaukee	$350,000
	Lac Courte Oreilles Housing Authority	$122,340
	State Subtotal:	$472,340
Wyoming		
	Eastern Shoshone Housing Authority	$250,000
	State Subtotal:	$250,000
Number of Applications Funded: 49	**Report Total**	$14,269,100

Case No

54876G0

07CR 05-33 12

State of Ohio,
Franklin County, ss

FILED
COMMON PLEAS COURT
FRANKLIN CO OHIO
2007 MAY -8 AM 11 4
CLERK OF COURTS

INDICTMENT FOR: Illegal Voting (3599.12 R.C.) (F-4) (2 Counts) and False Registration (3599.11 R.C.) (F-5) (2 Counts); (Total: 4 Counts)

In the Court of Common Pleas, Franklin County, Ohio, of the Grand Jury term beginning January twelfth in the year of our Lord, Two Thousand Seven

Count 1

The Jurors of the Grand Jury of the State of Ohio, duly selected, impaneled, sworn, and charged to inquire of crimes and offenses committed within the body of Franklin County, in the State of Ohio, upon their oath do find and present that Claudel Gilbert late of said County, on or about the 7th day of November in the year of our Lord, 2006, within the County of Franklin aforesaid, in violation of section 3599 12 of the Ohio Revised Code, did vote or attempt to vote in a general election in a precinct in which the defendant was not a legally qualified elector, to wit Claudel Gilbert signed the signature pool book in Franklin County, Ohio, Columbus ward 46, precinct G and voted in the 2006 general election when his place of residence was located in Licking County, Ohio,

Count 2

The Jurors of the Grand Jury of the State of Ohio, duly selected, impaneled, sworn, and charged to inquire of crimes and offenses committed within the body of Franklin County, in the State of Ohio, upon their oath do find and present that Claudel Gilbert late of said County, on or about the 7th day of November in the year of our Lord, 2006, within the County of Franklin aforesaid, in violation of section 3599 12 of the Ohio Revised Code, did vote or

ON COMPUTER

attempt more than once in the same election by any means, to wit Claudel Gilbert signed the signature poll book and voted in the 2006 general election in Franklin County, Ohio, Columbus ward 46, precinct G and in Licking County, Ohio, Reynoldsburg ward 2, precinct A,

54875G06

Count 3

The Jurors of the Grand Jury of the State of Ohio, duly selected, impaneled, sworn, and charged to inquire of crimes and offenses committed within the body of Franklin County, in the State of Ohio, upon their oath do find and present that Claudel Gilbert late of said County, from on or about September 13, 2006 to September 25, 2006, within the County of Franklin aforesaid, in violation of section 3599 11 of the Ohio Revised Code, did knowingly register or make application to register in a precinct in which the defendant is not a qualified voter, to wit Claudel Gilbert registered to vote by voter registration application by registering organization ACORN in Franklin County, Ohio having previously registered to vote by registration application by registering organization ACORN in Licking County, Ohio,

Count 4

The Jurors of the Grand Jury of the State of Ohio, duly selected, impaneled, sworn, and charged to inquire of crimes and offenses committed within the body of Franklin County, in the State of Ohio, upon their oath do find and present that Claudel Gilbert late of said County, on or about the 25th day of September in the year of our Lord, 2006, within the County of Franklin aforesaid, in violation of section 3599 11 of the Ohio Revised Code, did knowingly make any false statement on any form for registration or upon any application, to wit Claudel Gilbert registered to vote by voter registration application by registering organization ACORN in Franklin County, Ohio by identifying the county where he lived as Franklin County, Ohio when his place

of residence was in Licking County, contrary to the statute in such cases made and provided and against the peace and dignity of the State of Ohio

54876607

RON O'BRIEN
Prosecuting Attorney
Franklin County, Ohio

A TRUE BILL

Assistant Prosecuting Attorney

Foreperson, Grand Jury

State of Ohio v Claudel Gilbert
Address 8465 Reynoldswood Dr , Reynoldsburg, Ohio 43068
DOB 12-26 -68
Sex/Race male black
Date of Arrest _____
SSN 055-72-7544
Police Agency FCSO
Municipal Reference - -
ITN #

54876608

Count 1· Illegal Voting
3599 12 F-4
Count 2 Illegal Voting
3599 12 F-4
Count 3 False Registration
3599-11 F-5
Count 4 False Registration
3599-11 F-5

Case No

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	No. _____
	)	
v.	)	COUNT ONE:
	)	42 U.S.C. § 1973i(c) and
STEPHANIE L. DAVIS,	)	18 U.S.C. § 2
a/k/a LATISHA REED,	)	NMT: 5 years and $250,000
[DOB: XX/XX/1967]	)	Class D Felony
	)	NMT: 3 years Supervised Release
Defendant.	)	
	)	COUNT TWO:
	)	42 U.S.C. § 1973gg-10 and
	)	18 U.S.C. § 2
	)	NMT: 5 years and $250,000
	)	Class D Felony
	)	NMT: 3 years Supervised Release
	)	
	)	$100 Special Assessment on each
	)	count.

I N D I C T M E N T

THE GRAND JURY CHARGES THAT:

COUNT ONE

1. At all times material herein:

a. The Board of Election Commissioners for Kansas City, Missouri, receives and processes voter registration applications submitted for the purpose of registering new voters or, if the voter is already registered, for updating the registration information maintained by the Board.

b. Election registration in the State of Missouri is unitary, that is, a registrant registers once to become simultaneously eligible to vote for federal as well as non-federal candidates.

c. On November 7, 2006, an election will be held in Missouri, including in Kansas City and Jackson County, for the

purpose of selecting and electing candidates for federal, state, and local offices. Qualified voters eligible to vote under the laws of the State of Missouri cast ballots for candidates of their preference at these elections.

d. In the general election on November 7, 2006, candidates for members of the United States Senate and House of Representatives will be on the ballot in the State of Missouri.

e. ACORN is a not-for-profit organization, the mission of which is to improve minority and low-income communities.

f. Project Vote is a not-for-profit organization that works with ACORN to register voters for federal and local elections.

g. ACORN and Project Vote recruit and assign workers to visit low-income and minority neighborhoods in Kansas City, Jackson County, Missouri, and elsewhere, to obtain voter registrations. The workers are trained and instructed regarding how to obtain voter registrations and the preparation of voter registration applications, including that the actual voter must sign the voter application and that a forged signature is a violation of the law.

2. In or about August and September 2006, at Kansas City, in the Western District of Missouri, the defendant STEPHANIE L. DAVIS, a/k/a Latisha Reed, worked as a voter registration recruiter for ACORN, obtaining voter registrations.

3. On or about September 18, 2006, at Kansas City, in the Western District of Missouri, the defendant STEPHANIE L. DAVIS,

a/k/a Latisha Reed, knowingly and willfully caused to be submitted to the Kansas City Board of Election Commissioners voter registration applications in the name of XXXX which forms falsely stated the address of the voter being registered, to wit, the said defendant caused to be submitted Missouri Voter Registration Application No. 3187197 in the name of XXXX, showing an address of XXXX, Kansas City, Missouri; Missouri Voter Registration Application No. 3162014 in the name of XXXX, showing an address of XXXX, Kansas City, Missouri; and an unnumbered application in the name of XXXX, showing a false address of XXXX, Kansas City, Missouri.

All in violation of Title 42, United States Code, Section 1973i(c), and Title 18 United States Code, Section 2.

COUNT TWO

1. The Grand Jury incorporates paragraphs 1 and 2 of Count One as if fully set forth herein.

2. The qualified voters in the November 7, 2006, election have a right guaranteed by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution to have the aforesaid election officials count their votes and certify elections based on the number of valid ballots cast in the said election by qualified voters.

3. On or about September 18, 2006, at Kansas City, in the Western District of Missouri, the defendant the defendant STEPHANIE L. DAVIS, a/k/a Latisha Reed, knowingly and willfully caused to be submitted to the Kansas City Board of Election

Commissioners materially false voter registration applications, and thereby attempted to deprive or defraud the residents of the State of Missouri of a fair and impartially conducted election process, to wit, the said defendant caused to be submitted voter registration applications in the name of XXXX which falsely stated the address of the voter being registered, to wit, the said defendant caused to be submitted Missouri Voter Registration Application No. 3187197 in the name of XXXX, showing an address of XXXX, Kansas City, Missouri; Missouri Voter Registration Application No. 3162014 in the name of XXXX, showing an address of XXXX, Kansas City, Missouri; and an unnumbered application in the name of XXXX, showing an address of XXXX, Kansas City, Missouri, an address which does not exist.

All in violation of Title 42, United States Code, Section 1973gg-10, and Title 18, United States Code, Section 2.

A TRUE BILL

/s/ Foreperson
FOREPERSON OF THE GRAND JURY

/s/ Linda Parker Marshall
Linda Parker Marshall #24954
Assistant United States Attorney

Dated: 11/1/06

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	No. _____
	)	
v.	)	COUNT ONE:
	)	42 U.S.C. § 1973i(c) and
DALE D. FRANKLIN,	)	18 U.S.C. § 2
[DOB: XX/XX/1962]	)	NMT: 5 years and $250,000
	)	Class D Felony
Defendant.	)	NMT: 3 years Supervised Release
	)	
	)	COUNT TWO:
	)	42 U.S.C. § 1973gg-10 and
	)	18 U.S.C. § 2
	)	NMT: 5 years and $250,000
	)	Class D Felony
	)	NMT: 3 years Supervised Release
	)	
	)	
	)	$100 Special Assessment on each count.

I N D I C T M E N T

THE GRAND JURY CHARGES THAT:

COUNT ONE

1. At all times material herein:

a. The Board of Election Commissioners for Kansas City, Missouri, receives and processes voter registration applications submitted for the purpose of registering new voters or, if the voter is already registered, for updating the registration information maintained by the Board.

b. Election registration in the State of Missouri is unitary, that is, a registrant registers once to become simultaneously eligible to vote for federal as well as non-federal candidates.

c. On November 7, 2006, an election will be held in Missouri, including in Kansas City and Jackson County, for the purpose of selecting and electing candidates for federal, state, and local offices. Qualified voters eligible to vote under the laws of the State of Missouri cast ballots for candidates of their preference at these elections.

d. In the general election on November 7, 2006, candidates for members of the United States Senate and House of Representatives will be on the ballot in the State of Missouri.

e. ACORN is a not-for-profit organization, the mission of which is to improve minority and low-income communities.

f. Project Vote is a not-for-profit organization that works with ACORN to register voters for federal and local elections.

g. ACORN and Project Vote recruit and assign workers to visit low-income and minority neighborhoods in Kansas City, Jackson County, Missouri, and elsewhere, to obtain voter registrations. The workers are trained and instructed regarding how to obtain voter registrations and the preparation of voter registration applications, including that the actual voter must sign the voter application and that a forged signature is a violation of the law.

2. In or about late September and early October 2006, at Kansas City, in the Western District of Missouri, the defendant DALE D. FRANKLIN worked as a voter registration recruiter for ACORN, obtaining voter registrations.

3. In or about late September and early October 2006, at Kansas City, in the Western District of Missouri, the defendant DALE D. FRANKLIN knowingly and willfully caused to be submitted to the Kansas City Board of Election Commissioners a voter registration application which falsely stated the address and telephone number of the voter being registered, and which was not signed by the applicant, to wit, the said defendant submitted Missouri Voter Registration Application No. 3282610 in the name of XXXX on which the address and telephone number listed were false and the signature thereon was not that of the applicant.

All in violation of Title 42, United States Code, Section 1973i(c), and Title 18 United States Code, Section 2.

COUNT TWO

1. The Grand Jury incorporates paragraphs 1 and 2 of Count One as if fully set forth herein.

2. The qualified voters in the November 7, 2006, election have a right guaranteed by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution to have the aforesaid election officials count their votes and certify elections based on the number of valid ballots cast in the said election by qualified voters.

3. In or about late September and early October 2006, at Kansas City, in the Western District of Missouri, the defendant DALE D. FRANKLIN knowingly and willfully caused to be submitted to the Kansas City Board of Election Commissioners a materially false voter registration application, and thereby attempted to

deprive or defraud the residents of the State of Missouri of a fair and impartially conducted election process, to wit, the said defendant submitted Missouri Voter Registration Application No. 3282610 in the name of XXXX on which the address and telephone number listed were false and the signature thereon was not that of the applicant.

All in violation of Title 42, United States Code, Section 1973gg-10, and Title 18, United States Code, Section 2.

A TRUE BILL

/s/ Foreperson
FOREPERSON OF THE GRAND JURY

/s/ Linda Parker Marshall
Linda Parker Marshall #24954
Assistant United States Attorney

Dated: 11/1/06

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	No. _____
	)	
v.	)	COUNT ONE:
	)	42 U.S.C. § 1973i(c) and
BRIAN GARDNER,	)	18 U.S.C. § 2
[DOB: XX/XX/1966]	)	NMT: 5 years and $250,000
	)	Class D Felony
Defendant.	)	NMT: 3 years Supervised Release
	)	
	)	COUNT TWO:
	)	42 U.S.C. § 1973gg-10 and
	)	18 U.S.C. § 2
	)	NMT: 5 years and $250,000
	)	Class D Felony
	)	NMT: 3 years Supervised Release
	)	
	)	$100 Special Assessment on each count.

I N D I C T M E N T

THE GRAND JURY CHARGES THAT:

COUNT ONE

1. At all times material herein:

a. The Board of Election Commissioners for Kansas City, Missouri, receives and processes voter registration applications submitted for the purpose of registering new voters or, if the voter is already registered, for updating the registration information maintained by the Board.

b. Election registration in the State of Missouri is unitary, that is, a registrant registers once to become simultaneously eligible to vote for federal as well as non-federal candidates.

c. On November 7, 2006, an election will be held in Missouri, including in Kansas City and Jackson County, for the

purpose of selecting and electing candidates for federal, state, and local offices. Qualified voters eligible to vote under the laws of the State of Missouri cast ballots for candidates of their preference at these elections.

d. In the general election on November 7, 2006, candidates for members of the United States Senate and House of Representatives will be on the ballot in the State of Missouri.

e. ACORN is a not-for-profit organization, the mission of which is to improve minority and low-income communities.

f. Project Vote is a not-for-profit organization that works with ACORN to register voters for federal and local elections.

g. ACORN and Project Vote recruit and assign workers to visit low-income and minority neighborhoods in Kansas City, Jackson County, Missouri, and elsewhere, to obtain voter registrations. The workers are trained and instructed regarding how to obtain voter registrations and the preparation of voter registration applications, including that the actual voter must sign the voter application and that a forged signature is a violation of the law.

2. In or about late September 2006, at Kansas City, in the Western District of Missouri, the defendant BRIAN GARDNER worked as a voter registration recruiter for ACORN, obtaining voter registrations.

3. On or about September 25, 2006, at Kansas City, in the Western District of Missouri, the defendant BRIAN GARDNER

knowingly and willfully caused to be submitted to the Kansas City Board of Election Commissioners a voter registration application which form falsely stated the name of the voter being registered, to wit, the said defendant caused to be submitted Missouri Voter Registration Application No. 3282572 for XXXX, which was false in that XXXX did not register to vote on or about September 25, 2006; she did not reside at the address shown on the voter registration application; her date of birth is not that shown on the voter registrations; and the signature on the voter registration was not signed by XXXX.

All in violation of Title 42, United States Code, Section 1973i(c), and Title 18 United States Code, Section 2.

COUNT TWO

1. The Grand Jury incorporates paragraphs 1 and 2 of Count One as if fully set forth herein.

2. The qualified voters in the November 7, 2006, election have a right guaranteed by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution to have the aforesaid election officials count their votes and certify elections based on the number of valid ballots cast in the said election by qualified voters.

3. On or about September 25, 2006, at Kansas City, in the Western District of Missouri, the defendant BRIAN GARDNER knowingly and willfully caused to be submitted to the Kansas City Board of Election Commissioners a materially false voter registration application, and thereby attempted to deprive or

defraud the residents of the State of Missouri of a fair and impartially conducted election process, to wit, the said defendant caused to be submitted Missouri Voter Registration Application No. 3282572 for XXXX, which was false in that XXXX did not register to vote on or about September 25, 2006; she did not reside at the address shown on the voter registration application; her date of birth is not that shown on the voter registrations; and the signature on the voter registration was not signed by XXXX.

All in violation of Title 42, United States Code, Section 1973gg-10, and Title 18, United States Code, Section 2.

A TRUE BILL

/s/ Foreperson
FOREPERSON OF THE GRAND JURY

/s/ Linda Parker Marshall
Linda Parker Marshall #24954
Assistant United States Attorney

Dated: 11/1/06

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	No. _____
	)	
v.	)	COUNT ONE:
	)	42 U.S.C. § 1973i(c) and
KWAIM A. STENSON,	)	18 U.S.C. § 2
[DOB: XX/XX/1987]	)	NMT: 5 years and $250,000
	)	Class D Felony
Defendant.	)	NMT: 3 years Supervised Release
	)	
	)	COUNT TWO:
	)	42 U.S.C. § 1973gg-10 and
	)	18 U.S.C. § 2
	)	NMT: 5 years and $250,000
	)	Class D Felony
	)	NMT: 3 years Supervised Release
	)	
	)	
	)	$100 Special Assessment on each count.

I N D I C T M E N T

THE GRAND JURY CHARGES THAT:

COUNT ONE

1. At all times material herein:

a. The Board of Election Commissioners for Kansas City, Missouri, receives and processes voter registration applications submitted for the purpose of registering new voters or, if the voter is already registered, for updating the registration information maintained by the Board.

b. Election registration in the State of Missouri is unitary, that is, a registrant registers once to become simultaneously eligible to vote for federal as well as non-federal candidates.

c. On November 7, 2006, an election will be held in Missouri, including in Kansas City and Jackson County, for the purpose of selecting and electing candidates for federal, state, and local offices. Qualified voters eligible to vote under the laws of the State of Missouri cast ballots for candidates of their preference at these elections.

d. In the general election on November 7, 2006, candidates for members of the United States Senate and House of Representatives will be on the ballot in the State of Missouri.

e. ACORN is a not-for-profit organization, the mission of which is to improve minority and low-income communities.

f. Project Vote is a not-for-profit organization that works with ACORN to register voters for federal and local elections.

g. ACORN and Project Vote recruit and assign workers to visit low-income and minority neighborhoods in Kansas City, Jackson County, Missouri, and elsewhere, to obtain voter registrations. The workers are trained and instructed regarding how to obtain voter registrations and the preparation of voter registration applications, including that the actual voter must sign the voter application and that a forged signature is a violation of the law.

2. In or about July and August 2006, at Kansas City, in the Western District of Missouri, the defendant KWAIM A. STENSON worked as a voter registration recruiter for ACORN, obtaining voter registrations.

3. On or about July 31, 2006, at Kansas City, in the Western District of Missouri, the defendant KWAIM A. STENSON knowingly and willfully caused to be submitted to the Kansas City Board of Election Commissioners a false voter registration application, to wit, the said defendant caused to be submitted Missouri Voter Registration Application No. 3077376 for XXXX, which was false in that Damian Ross did not register to vote on or about July 31, 2006, and the signature thereon was not that of Damian Ross.

All in violation of Title 42, United States Code, Section 1973i(c), and Title 18 United States Code, Section 2.

COUNT TWO

1. The Grand Jury incorporates paragraphs 1 and 2 of Count One as if fully set forth herein.

2. The qualified voters in the November 7, 2006, election have a right guaranteed by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution to have the aforesaid election officials count their votes and certify elections based on the number of valid ballots cast in the said election by qualified voters.

3. On or about July 31, 2006, at Kansas City, in the Western District of Missouri, the defendant KWAIM A. STENSON knowingly and willfully caused to be submitted to the Kansas City Board of Election Commissioners a materially false voter registration application, and thereby attempted to deprive or defraud the residents of the State of Missouri of a fair and

impartially conducted election process, to wit, the said defendant caused to be submitted Missouri Voter Registration Application No. 3077376 for XXXX, which was false in that Damian Ross did not register to vote on or about July 31, 2006, and the signature thereon was not that of Damian Ross.

All in violation of Title 42, United States Code, Section 1973gg-10, and Title 18, United States Code, Section 2.

A TRUE BILL

/s/ Foreperson

FOREPERSON OF THE GRAND JURY

/s/ Linda Parker Marshall
Linda Parker Marshall #24954
Assistant United States Attorney

Dated: 11/1/06

Congress of the United States
Washington, DC 20515

July 31, 2008

Representative Barney Frank
Chairman, Financial Services Committee
2252 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Frank:

We are writing to request that the Financial Services Committee hold immediate hearings to investigate evidence that the ACORN Housing Corporation (AHC) and its affiliate ACORN may be using public funds inappropriately. Each year, AHC takes in millions of dollars from taxpayers. And each year, AHC sends millions of dollars out to ACORN fraternal organizations that engage in political activities.

On June 18, the Consumers Rights League published a whistleblower report containing a collection of internal ACORN documents that suggest that there is an ongoing practice of comingling of taxpayer funds with political projects. In addition, ACORN is under investigation in numerous states and jurisdictions for possible voter registration fraud and it was most recently revealed that ACORN officials knowingly covered up the embezzlement of funds from Citizens Consulting group, an ACORN affiliate that has received millions of dollars from AHC.

These allegations of fraudulent activities and embezzlement are even more troubling against the backdrop of evidence that public funds could have been used to fund them.

We believe that Congress has a duty to ensure that any organization receiving funds from the public trust must be held accountable for the manner in which they use them. Therefore, we strongly encourage you to hold comprehensive hearings to investigate these allegations and develop solutions to prevent any future abuses from occurring.

Sincerely,

Tom Feeney

PRINTED ON RECYCLED PAPER

Ed Royce

Michele Bachmann

Bill Shuster

Ron Paul

Thelma Drake

Mary Fallin

Pete Sessions

Steve King

Cole H. Palme

Dan Burton

Frank D. Lucas

Ginny Brown-Waite

[illegible]

K. Mike Conaway

[illegible]

Judy Biggert

Scott Garrett

Kevin McCarthy

T. McCotter

John Campbell

Wally Herger

Terry Everett

[illegible]

Jeffrey R Pitts

Thomas Rio

Bill Sali

Patrick J. McHenry

Dean Heller

Sam Johnson

D. Beidon

Doug Lamborn

Donald Manzullo

John Culberson

J Rady Hoches

Trent Franks

500 new voters might not exist

State activists might be charged over questionable registrations

Friday, August 11, 2006

ROBERT VITALE AND MARK NIQUETTE
THE COLUMBUS DISPATCH

Workers paid by a liberal group to register voters in Franklin County have turned in more than 500 forms with nonexistent addresses and potentially fake signatures, elections officials said yesterday.

Board of Elections Director Matthew Damschroder said he has forwarded the cards to county authorities for possible criminal charges.

Elections workers verifying new-voter forms discovered signatures with the same handwriting, addresses that were for vacant lots and incorrect information for voters who already were registered, Damschroder said. One card had the name of an East Side man who's dead.

All the questionable cards were turned in by workers for Ohio ACORN, a group that's also paying people to gather signatures for a proposed November ballot initiative to raise the state's minimum wage.

Katy Gall, the group's head organizer, said ACORN is cooperating with the investigation and already has fired some of its paid circulators.

"We are interested in seeing people who are gaming the system prosecuted," she said.

ACORN, the Association of Community Organizations for Reform Now, faced similar problems in 2004 during a drive that added 189,000 new voters to Ohio's rolls. Prosecutors were unable to trace the originators of some falsified forms, but one ACORN worker was indicted by a Franklin County grand jury.

State law now requires people paid for registering voters to add their own names to the forms. James Lee, a spokesman for Secretary of State J. Kenneth Blackwell, said the new provisions make it easier to investigate problems.

Lee said Blackwell's office also has had inquiries recently about potential voter-registration fraud in Cuyahoga and Summit counties.

In its six Ohio offices, ACORN has about 50 circulators who are paid between $8 and $11 an hour, Gall said. The group has eight circulators in Columbus.

Gall complained that the state's election-law changes make it harder for groups to catch problems because circulators must submit forms directly to elections offices in person or by mail.

In 2004, ACORN began running its own checks on voter forms before submitting them to the Franklin County Board of Elections.

Lee, however, said internal checks are still possible.

It's a felony in Ohio to submit voter-registration forms with false information. The penalty is up to 18 months in jail.

Damschroder said he doesn't think the fake forms were submitted by people intending to cast fake ballots in November.

"I think it's just somebody out there trying to make a fast buck," he said.

ACORN is helping lead the coalition that collected more than 765,000 signatures to put the minimum-wage issue on the Nov. 7 ballot, but Gall said the group has no concerns about the signatures its circulators obtained.

Franklin County elections workers will verify those collected locally, Damschroder said.

rvitale@dispatch.com?

mniquette@dispatch.com?

REVIEW & OUTLOOK

The Acorn Indictments

A union-backed outfit faces charges of election fraud.

Friday, November 3, 2006 12:01 a.m. EST

So, less than a week before the midterm elections, four workers from Acorn, the liberal activist group that has registered millions of voters, have been indicted by a federal grand jury for submitting false voter registration forms to the Kansas City, Missouri, election board. But hey, who needs voter ID laws?

We wish this were an aberration, but allegations of fraud have tainted Acorn voter drives across the country. Acorn workers have been convicted in Wisconsin and Colorado, and investigations are still under way in Ohio, Tennessee and Pennsylvania.

The good news for anyone who cares about voter integrity is that the Justice Department finally seems poised to connect these dots instead of dismissing such revelations as the work of a few yahoos. After the federal indictments were handed up in Kansas City this week, the U.S. Attorney's office said in a statement that "This national investigation is very much ongoing."

Let's hope so. Acorn officials bill themselves as nonpartisan community organizers merely interested in giving a voice to minorities and the poor. In reality, Acorn is a union-backed, multimillion-dollar outfit that uses intimidation and other tactics to push for higher minimum wage mandates and to trash Wal-Mart and other non-union companies.

Operating in at least 38 states (as well as Canada and Mexico), Acorn pushes a highly partisan agenda, and its organizers are best understood as shock troops for the AFL-CIO and even the Democratic Party. As part of the Fannie Mae reform bill, House Democrats pushed an "affordable housing trust fund" designed to use Fannie Mae and Freddie Mac profits to subsidize Acorn, among other groups. A version of this trust fund actually passed the Republican House and will surely be on the agenda again next year.

Acorn and its affiliates have pulled some real stunts in recent years. In Ohio in 2004, a worker for one affiliate was given crack cocaine in exchange for fraudulent registrations that included underage voters, dead voters and pillars of the community named Mary Poppins, Dick Tracy and Jive Turkey. During a Congressional hearing in Ohio in the aftermath of the 2004 election, officials from several counties in the state explained Acorn's practice of dumping thousands of registration forms in their lap on the submission deadline, even though the forms had been collected months earlier.

"You have to wonder what's the point of that, if not to overwhelm the system and get phony registrations on the voter rolls," says Thor Hearne of the American Center for Voting Rights, who also testified at the hearing. "These were Democratic officials saying that they felt their election system in Ohio was under assault by these kinds of efforts to game the system."

Given this history, it's not surprising that Acorn is so hostile to voter identification laws and other efforts to ensure fairness and accuracy at the polls. In Missouri last month, the state Supreme Court held that a photo ID requirement to vote was overly burdensome and a violation of the state constitution. Acorn was behind the original suit challenging the statute, and it has brought similar challenges in several other states, including Ohio.

A recent Pew Research Center survey found that blacks today are almost twice as likely as they were in 2004 to say they have little or no confidence in the voting system. Such a finding would seem like a powerful argument for voter ID laws, which consistently poll well among people of all races and incomes and would increase confidence in the voting process. Of course, voter ID laws would also cut down on fraud, which, judging from the latest indictments, would put a real crimp in Acorn's style.

The New York Times
nytimes.com

PRINTER-FRIENDLY FORMAT SPONSORED BY

July 9, 2008

Funds Misappropriated at 2 Nonprofit Groups

By STEPHANIE STROM

Two prominent national nonprofit groups are reeling from public disclosures that large sums of money were misappropriated in unrelated incidents by an employee and a former employee.

The groups, Acorn, one of the country's largest community organizing groups, and the Points of Light Institute, which works to encourage civic activism and volnnteering, have dealt with the problems in very different ways.

Acorn chose to treat the embezzlement of nearly $1 million eight years ago as an internal matter and did not even notify its board. After Points of Light noticed financial irregularities in early June, it took less than a month for management to alert federal prosecutors, although group officials say they have no clear idea yet what the financial impact may be.

A whistle-blower forced Acorn to disclose the embezzlement, which involved the brother of the organization's founder, Wade Rathke.

The brother, Dale Rathke, embezzled nearly $1 million from Acorn and affiliated charitable organizations in 1999 and 2000, Acorn officials said, but a small group of executives decided to keep the information from almost all of the group's board members and not to alert law enforcement.

Dale Rathke remained on Acorn's payroll until a month ago, when disclosure of his theft by foundations and other donors forced the organization to dismiss him.

"We thought it best at the time to protect the organization, as well as to get the funds back into the organization, to deal with it in-house," said Maude Hurd, president of Acorn. "It was a judgment call at the time, and looking back, people can agree or disagree with it, but we did what we thought was right."

The amount Dale Rathke embezzled, $948,607.50, was carried as a loan on the books of Citizens Consulting Inc., which provides bookkeeping, accounting and other financial management services to Acorn and many of its affiliated entities.

Wade Rathke said the organization had signed a restitution agreement with his brother in which his family agreed to repay the amount embezzled in exchange for confidentiality.

Wade Rathke stepped down as Acorn's chief organizer on June 2, the same day his brother left, but he remains chief organizer for Acorn Internatioual L.L.C.

He said the decision to keep the matter secret was not made to protect his brother but because word of the embezzlement would have put a "weapon" into the hands of enemies of Acorn, a liberal group that is a frequent target of conservatives who object to its often strident advocacy on behalf of low- and moderate-income families and workers.

Wade Rathke said he learned of the problem when an employee of Citizens Consulting alerted him abont suspicious credit card transactions. An internal investigation uncovered inappropriate charges on the cards that led back to his brother.

"Clearly, this was an uncomfortable, conflicting and humiliating situation as far as my family and I were concerned," he said, "and so the real decisions on how to handle it had to be made by others."

The executive director of New York Acorn, Bertha Lewis, who has been named director of an interim management committee set up to run the national group's day-to-day operations, said Dale Rathke was paid about $38,000 a year but that none of that money was used to pay back Acorn.

Instead, she said, the Rathke family has paid Acorn $30,000 a year in restitution since 2001, or a total of $210,000.

A donor has offered to give Acorn the rest of what the Rathkes owe, and an agreement to that effect should be finalized in coming days, Ms. Lewis said.

"Now that this is under our watch, we are putting financial auditors in place, legal counsel in place, a strong management team in place to make sure this organization moves forward for another 38 years," she said. "I will not allow and the board will not allow something like this to happen again."

But the fact that most of the handful of people who did not disclose the fraud when they learned of it eight years ago still work for Acorn or its affiliates concerns many of the group's financial supporters.

"We've told them that when the process is ended, we'll have a look at it," said Dave Beckwith,

executive director of the Needmor Fund, which has given money to some of Acorn's charity affiliates for at least 10 years and was contacted by the whistle-blower in May.

Representatives of some 30 foundations and large donors have been discussing the matter on conference calls and may establish a committee to monitor Acorn's overhaul of its management and accountability systems.

Officials at Points of Light began looking into complaints about a store the organization operated on eBay and by late June had discovered what its president and chief executive, Michelle Nunn, called "abnormalities" in the business practices of an independent contractor hired to run the store, which did a brisk business auctioning travel packages and items donated to the organization.

The travel auctions were stopped immediately, Ms. Nunn said, and the store was shut down a short time later. Points of Light also posted a statement on its Web site last weekend about the problems and contacted the United States Attorney's Office in Washington, as well as people who had bought the travel packages.

Two people who have been involved in the internal investigation at Points of Light, who spoke on the condition of anonymity because it is incomplete, said it appeared that Maria Herrmann, a former Points of Light fund-raiser who was hired as an independent contractor to manage the eBay store operation, may have been auctioning off bogus trip packages.

Ms. Herrmann did not respond to a message left at her home on Tuesday, and phone and e-mail messages to the office were answered by automated responses from the service Points of Light has hired to process reimbursement applications for the packages.

The organization is making good on trips scheduled through next Tuesday, Ms. Nunn said, and hopes to repay consumers for the rest of the packages that were sold. She said Points of Light began alerting donors last week about the problem, and some have agreed to help it repay customers who bought the packages.

Ms. Nunn also said she did not know how much the group would lose. "Our hope is that this is an isolated event, and that the actions of what we believe to be a single individual at this point doesn't jeopardize the work of millions of volunteers," she said.

The problem surfaced when Points of Light began getting complaints from people who had not received the vouchers and certificates they needed to redeem the travel packages.

Anna Ware, a small business owner in Atlanta, said that in late June when she arrived at the Seattle hotel included in a package she had bought from the Points of Light eBay store, the hotel had not received the certificates for her stay. She sent Ms. Herrmann an e-mail message and received an automated response from her Points of Light e-mail address. Two days later, the certificates arrived by FedEx.

"I could be out several thousand dollars," said Ms. Ware, who has bought trip packages as bonuses for her employees as well as for gifts for friends and family. "I'm now calling them all and letting them know those trips may not happen."

Dozens of people posted similar comments on an eBay discussion board, which the site has closed.

The legitimate trip packages were put together by Mitch-Stuart Inc., a company that bundles airline seats and hotel rooms. It sells the packages on consignment to nonprofit organizations like the Red Cross and Big Brothers Big Sisters, which resell them for a higher price, pocketing the difference.

Ms. Nunn said that Mitch-Stuart was not involved in any way with the bogus packages and that it was helping Points of Light make good on all trips sold for travel through next Tuesday.

Copyright 2008 The New York Times Company

pennlive.com

The Patriot-News

This following article is part of our archive

DAUPHIN COUNTY

Former temp worker accused of bogus voter registrations

Thursday, July 24, 2008

BY REGGIE SHEFFIELD
Of The Patriot-News

A former temporary worker for a national community action group recently questioned by Dauphin County investigators about bogus voter registration forms is now a wanted man.

Luis R. Torres-Serrano, 37, of the 200 block of South 15th Street, is accused by authorities of submitting more than 100 fraudulent voter registration forms he collected on behalf of the Association of Community Organizations for Reform Now to county election officials.

"We're actively looking for Torres-Serrano," said John Goshert, chief of the Dauphin County detective bureau on Wednesday. "We're offering up to $2,000 for information on his whereabouts."

Dauphin County elections head Steven G. Chiavetta alerted county investigators to the suspected bogus voter registration forms late last month. In some cases, his office was contacted by people who received a new voter registration card and said they never filled out a form, Chiavetta said.

Chiavetta then forwarded his concerns about the forms submitted by Torres-Serrano to the Pennsylvania Department of State's elections bureau, which alerted voter registration offices statewide.

Torres-Serrano is charged with 19 counts of perjury, making false statements, forgery and identity theft in connection with the voter registration forms, authorities said.

Forgery, a second-degree felony, carries a possible maximum 10-year sentence and perjury has a possible 7-year sentence. Identity theft is punishable with five years, and making false statements carries a 2-year penalty.

ACORN spokesman Charles Jackson said that as soon as the group learned of the suspicious forms, Torres-Serrano was fired. ACORN fully cooperated with county investigators, he said.

"We're hoping that he's prosecuted to the fullest extent of the law," Jackson said.

REGGIE SHEFFIELD: 255-8170 or rsheffield@patriot-news.com

HOW TO HELP

Anyone with information about Luis R. Torres- Serrano or who thinks they were a victim can call the Dauphin County Criminal Investigation Division at 780-6200.

©2009 Patriot-News
© 2009 PennLive.com All Rights Reserved.

Context: Because of the hotly contested presidential election this year, and the narrow margin by which Democrats hold both chambers of Congress, the issue of election integrity will be front-and-center throughout 2008. Accusations of vote fraud continue to circulate, and the question of whether the states can take proactive steps to protect the legitimacy of elections for federal office is before the courts.

This brief features a running list of examples of vote fraud reported in the media and highlights the legislative proposals introduced to increase—or arguably to decrease in some cases—the integrity of elections nationwide. This list is not intended to be exhaustive.

Running List of Examples of Vote Fraud Reported in the Media:
This list will be updated as necessary throughout 2008.

- On April 11, 2008, a St. Louis man admitted he applied for and used his dead mother's absentee ballot to vote in Missouri on Super Tuesday in February. http://www.columbiatribune.com/2008/Apr/20080412News008.asp

- On April 2, 2008, eight workers for ACORN, the Association of Community Organizations for Reform Now, pleaded guilty to federal election fraud for submitting registration cards for the 2006 election using false addresses, made-up names, and forged signatures. http://www.freerepublic.com/focus/f-news/1995724/posts

- On March 13, 2008, Philadelphia election officials accused ACORN, the Association of Community Organizations for Reform Now, of submitting voter-registration paperwork without sufficient data, with discrepancies, or for people already registered. Election commissioners are asking the District Attorney's Office to investigate ACORN's registration efforts prior to the Pennsylvania presidential primary next month. http://www.philly.com/dailynews/local/20080313_City_reminds_Philadelphia_of_March_24_voter-registration_deadline.html

- On March 4, 2008, the Hillary Clinton campaign accused the Barack Obama campaign of voting irregularities in Texas, including prematurely removing convention packets from polling places, locking Clinton supporters out of caucus sites, and filling out precinct convention sign-in sheets during the day and submitting them as completed vote totals at caucus. http://corner.nationalreview.com/post/?q=MWMyYWM0YjA0MGY4YzMzNjE5M2I5MjlhMDRiMjFlOTQ=

- On February 26, 2008, a detailed report on election irregularities in Milwaukee for the 2004 general election was released. Among the irregularities cited are:

  - 4,600 more votes cast and counted than voters recorded as having cast ballots;

- 18 felons sworn in as deputy registrars for the 2004 election, eight of whom listed ACORN as their sponsoring organization;
- 1,305 votes by "on-site" registrants who provided registration forms lacking sufficient information to be entered into a permanent database, including 48 voters who provided no name and 854 voters who provided no address;
- Numerous instances of ballots cast by ineligible "not in city" registrants;
- At least 16 cases of campaign workers from out-of-state who voted while employed by a group or campaign attempting to influence the election;
- Four deceased persons recorded as having voted; and
- At least three instances of votes cast by ineligible felons.

http://media2.620wtmj.com/breakingnews/ElectionResults_2004_VoterFraudInvestigation_MPD-SIU-A2474926.pdf

- ACORN is at the center of a voter fraud scandal in Washington state. One county plans to purge 230 ACORN-provided names from voter rolls in early February 2008 as the county completes an investigation of what one news outlet calls "the worst voter-registration fraud in Washington history."
http://www.thenewstribune.com/news/local/story/272772.html

- Various lawsuits were filed in Nevada by the Hillary Clinton and Barack Obama presidential campaigns—or their surrogates, each alleging voter suppression (such as pre-filled-out ballots, false information provided to voters, etc.) by the other side.
http://thehill.com/leading-the-news/clinton-wins-nevada-caucuses-steeped-in-accusations-uncertainty-2008-01-19.html

- A woman cited by opponents of the Indiana photo ID law (discussed below) as an example of how the law hurts older people was just discovered to be registered to vote in two states (Florida and Indiana). She used her Florida driver's license to try to vote in Indiana in 2006.
http://www.kpcnews.com/articles/2008/01/09/news/today/evening_star/doc478441f2313a5420740819.txt

- Ward officials in Chicago were recently accused of manipulating absentee ballots.
http://www.suntimes.com/news/metro/766772,CST-NWS-vote30.article

- A federal judge recently sentenced a Kentucky man for buying votes in a primary election in 2006. http://www.wave3.com/Global/story.asp?S=7591900&nav=0RZF

Legislative Proposals: The legislative proposals that have been introduced in the 110th Congress to address election integrity can be grouped into two main subgroups: 1) ballot integrity and 2) voter verification. Examples of both are below.

Ballot Integrity

Rep. Rush Holt (D-NJ) introduced the Voter Confidence and Increased Accessibility Act (H.R. 811), which would make a number of changes to federal election law, specifically

regarding the audit capacity of voting systems. The bill would require, by November 2008, that each voting system used in a federal election meet certain requirements, require that paper receipts be produced for each vote cast, set certain requirements for manual recounts, and prohibit modern technology from being used for any voting system in a federal election. The bill, as reported from committee, was scheduled for House floor consideration in September 2007, and information about the bill remains posted on the Rules Committee's website to this day, but the bill was pulled after it was the subject of intense opposition from state and local election officials.

Rep. Susan Davis (D-CA) introduced the Universal Right to Vote by Mail Act (H.R. 281), which would prohibit a state from imposing additional conditions or requirements on the eligibility of an individual to cast a vote in federal elections by mail, except to the extent that it imposes a deadline for requesting the ballot and returning it to the appropriate state or local election official. The bill has not been acted on by committee.

Rep. Stephanie Tubbs Jones (D-OH) introduced the Count Every Vote Act (H.R. 1381), which would implement a variety of federal mandates on election systems, including making it easier to cast provisional ballots, making it harder to purge voter rolls, and making it easier for ex-felons to vote. The bill has not been acted on by committee.

Rep. Steve King (R-IA) introduced the Know Your Vote Counts Act (H.R. 3500), which would require that election systems used in federal elections provide a paper receipt of each vote (which could not be removed from the polling place) and the opportunity for each voter to verify his or her vote (and the chance to make changes) before the vote becomes final. The bill has not been acted on by committee.

Rep. Rush Holt (D-NJ) introduced the Provisional Ballot Fairness in Counting Act (H.R. 4145), which would prohibit any election recount until all provisional votes (votes cast when the voter is not registered or otherwise is not immediately qualified to vote, pending further investigation) have been counted. The chief state election official, in determining whether to count a provisional vote, would have to review, not only official registered voter lists, but also any information an individual voter submitted during the registration process. Provisional ballots in a federal election would have to be treated as a voter registration application, if the vote is rejected on the ground that the individual is not registered to vote in the election. The bill has not been acted on by committee.

Rep. Rush Holt (D-NJ), in response to the bipartisan controversy that erupted over his bill, H.R. 811, which almost came to the House floor, introduced the Emergency Assistance for Secure Elections Act (H.R. 5036), which require the Election Assistance Commission (EAC) to reimburse states for the costs of converting to voting systems that produce paper ballots, reimburse any jurisdiction for the costs of conducting manual audits or hand recounts of the November 2008 federal election, and direct the National Institute of Standards and Technology (NIST) to study systems for verifying paper ballots. On April 15, 2008, the bill was brought to the House floor and failed by a vote of 239-178 (two-thirds required for passage under suspension of the rules).

Rep. Keith Ellison (D-MN) introduced the Make Provisional Ballots Count Act (H.R. 5628), which would allow same-day voter re-registration at polling places on the date of election for individuals otherwise permitted to cast provisional ballots and require the counting of provisional ballots cast by individuals determined to be registered to vote in the state or the congressional district. The bill has not been acted on by committee.

Rep. Zoe Lofgren (D-CA) introduced legislation (H.R. 5803) directing the Election Assistance Commission to establish a grant program for states and localities to implement a program to make backup paper ballots available in the case of the failure of a voting system or voting equipment in the November 2008 federal election or some other emergency situation. The bill has not been acted on by committee.

Voter Verification

Rep. John Doolittle (R-CA) introduced the Federal Election Integrity Act (H.R. 481), which would prohibit an election official from providing a federal election ballot to an individual who desires to vote in person unless the individual presents to the official: a government-issued, current, and valid photo identification; or (beginning in 2010) a government-issued, current, and valid photo ID for which the individual was required to provide proof of U.S. citizenship as a condition for issuance of the ID. An individual who does not present such an ID would be permitted to cast a provisional ballot, but such individual would have to present the required ID within 48 hours after casting the provisional ballot to have that vote verified. The bill has not been acted on by committee.

Rep. Tom Feeney (R-FL) introduced the Verifying the Outcome of Tomorrow's Elections Act (H.R. 879), which would prohibit an election official from providing a ballot for a federal election to an individual who desires to vote in person or by mail, unless the individual presents to the official a current, valid, state-issued photo identification based on proof of U.S. citizenship. The bill has not been acted on by committee.

Rep. Keith Ellison (D-MN) introduced the Voter Access Protection Act (H.R. 4026), which would prohibit election officials from requiring an individual to provide a photo identification as a condition for voting in a federal election. The bill has not been acted on by committee.

Rep. Ginny Brown-Waite (R-FL) introduced the Noncitizen Voting Prevention Act (H.R. 5695), which would require applications for voter registration with respect to federal office to include a statement regarding the deportability of aliens making false claims of U.S. citizenship and require the posting at polling places of notices that it is a violation of federal law for an individual who is not a U.S. citizen to cast a ballot in an election for federal office. The bill has not been acted on by committee.

Additionally, on January 9, 2008, the U.S. Supreme Court heard arguments in *Crawford v. Marion County Election Board* and *Indiana Democratic Party v. Rokita*. The controversy surrounds Indiana's requirement that voters show photo identification when they cast their ballot. As Robert Bluey of the Heritage Foundation notes, proponents of the Indiana law argue that, at a time when Americans are asked to show photo ID for routine things like

buying alcohol or getting on an airplane, it does not seem unreasonable to require the same for voting in federal elections. Bluey also notes that there is also considerable public support for voter ID requirements; Rasmussen puts the number at 77 percent approval nationally.

Opponents of photo ID laws, including the Democrat Party and the American Civil Liberties Union (ACLU), assert that requiring photo ID at polling places disenfranchises low-income citizens, minorities, and seniors, who are less likely to have photo IDs. However, a statistical analysis completed by The Heritage Foundation in September 2007, found that voter ID laws do not depress voter turnout.

About 35 congressional Republicans filed a friend-of-the-court brief stating that, when they helped enact the Help America Vote Act, they fully intended to give states the freedom to set their own rules regarding voter verification. Indiana took advantage in 2005 and approved its photo ID requirement that is being challenged now.

On April 28, 2008, the U.S. Supreme Court upheld a lower-court ruling on the *Crawford v. Marion County Election Board* case (Indiana's photo ID requirement) that the burden the photo ID requirement places on voters is offset by the benefit to voters at large and to electoral integrity of reducing the risk of vote fraud. Thus, the Supreme Court upheld the constitutionality of Indiana's photo ID law.

F. JAMES SENSENBRENNER, JR., Wisconsin
CHAIRMAN

HENRY J. HYDE, Illinois
HOWARD COBLE, North Carolina
LAMAR S. SMITH, Texas
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
BOB BARR, Georgia
WILLIAM L. JENKINS, Tennessee
CHRIS CANNON, Utah
SPENCER BACHUS, Alabama
JOHN N. HOSTETTLER, Indiana
MARK GREEN, Wisconsin
RIC KELLER, Florida
MELISSA A. HART, Pennsylvania
JEFF FLAKE, Arizona
MIKE PENCE, Indiana
J. RANDY FORBES, Virginia
STEVE KING, Iowa
JOHN R. CARTER, Texas
TOM FEENEY, Florida
MARSHA BLACKBURN, Tennessee

ONE HUNDRED EIGHTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6216

(202) 225–3951

http://www.house.gov/judiciary

JOHN CONYERS, JR., MICHIGAN
RANKING MINORITY MEMBER

HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
JERROLD NADLER, New York
ROBERT C. "BOBBY" SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
KAREN BASS, California
CHARLES B. RANGEL, New York
WILLIAM D. DELAHUNT, Massachusetts
ROBERT WEXLER, Florida
TAMMY BALDWIN, Wisconsin
ANTHONY D. WEINER, New York
ADAM B. SCHIFF, California
LINDA T. SÁNCHEZ, California

December 2, 2004

The Honorable J. Kenneth Blackwell
Ohio Secretary of State
180 East Broad Street, 16th Floor
Columbus, OH 43215

Dear Secretary Blackwell:

We write to request your assistance with our ongoing investigation of election irregularities in the 2004 Presidential election. As you may be aware, the Government Accountability Office has agreed to undertake a systematic and comprehensive review of election irregularities throughout the nation. As a separate matter, we have requested that the House Judiciary Committee Democratic staff undertake a thorough review of each and every specific allegation of election irregularities received by our offices.

Collectively, we are concerned that these complaints constitute a troubled portrait of a one-two punch that may well have altered and suppressed votes, particularly minority and Democratic votes. First, it appears there were substantial irregularities in vote tallies. It is unclear whether these apparent errors were the result of machine malfunctions or fraud.

Second, it appears that a series of actions of government and non-government officials may have worked to frustrate minority voters. Consistent and widespread reports indicate a lack of voting machines in urban, minority and Democratic areas, and a surplus of such machines in Republican, white and rural areas. As a result, minority voters were discouraged from voting by lines that were in excess of eight hours long. Many of these voters were also apparently victims of a campaign of deception, where flyers and calls would direct them to the wrong polling place. Once at that polling place, after waiting for hours in line, many of these voters were provided provisional ballots after learning they were at the wrong location. These ballots were not counted in many jurisdictions because of a directive issued by some election officials, such as yourself.

We are sure you agree with us that regardless of the outcome of the election, it is imperative that we examine any and all factors that may have led to voting irregularities and any failure of votes to be properly counted. Toward that end, we ask you to respond to the following allegations:

The Honorable J. Kenneth Blackwell
Page Two
December 2, 2004

I. Counting Irregularities

A. **Warren County Lockdown** – On election night, Warren County locked down its administration building and barred reporters from observing the counting.[1] When that decision was questioned, County officials claimed they were responding to a terrorist threat that ranked a "10" on a scale of 1 to 10, and that this information was received from an FBI agent.[2] Despite repeated requests, County officials have declined to name that agent, however, and the FBI has stated that they had no information about a terror threat in Warren County.[3] Your office has stated that it does not know of any other county that took these drastic measures.[4]

In addition to these contradictions, Warren County officials have given conflicting accounts of when the decision was made to lock down the building.[5] While the County Commissioner has stated that the decision to lockdown the building was made during an October 28 closed-door meeting, emailed memos – dated October 25 and 26 – indicate that preparations for the lockdown were already underway.[6]

This lockdown must be viewed in the context of the aberrational results in Warren County. In the 2000 Presidential election, the Democratic Presidential candidate, Al Gore, stopped running television commercials and pulled resources out of Ohio weeks before the election. He won 28% of the vote in Warren County.[7] In 2004, the Democratic Presidential candidate, John Kerry, fiercely contested Ohio and independent groups put considerable resources into getting out the Democratic vote. Moreover, unlike in 2000, independent candidate

---

[1]Erica Solvig,, *Warren County Still Counting*, CINCINNATI ENQUIRER, Nov. 3, 2004.

[2]Erica Solvig, *Warren Co. Defends Lockdown Decision*, CINCINNATI ENQUIRER, Nov. 10, 2004.

[3]*Id.*

[4]*Id.*

[5]Erica Solvig,, *No changes in final Warren Co. vote count, Emails released Monday show lockdown pre-planned*, CINCINNATI ENQUIRER, Nov. 16, 2004.

[6]*Id.*

[7]Ohio Secretary of State 2000 Presidential Vote Results, www.sos.state.oh.us/sos/results/2000/gen/pres.htm. Gore received 19,142 votes out of a total of 69,078 cast (27.71%).

Ralph Nader was not on the Ohio ballot in 2004. Yet, the tallies reflect John Kerry receiving exactly the same percentage in Warren County as Gore received, 28%.[8]

We hope you agree that transparent election procedures are vital to public confidence in electoral results. Moreover, such aberrant procedures only create suspicion and doubt that the counting of votes was manipulated. As part of your decision to certify the election, we hope you have investigated these concerns and found them without merit. To assist us in reaching a similar conclusion, we ask the following:

1. Have you, in fact, conducted an investigation of the lockdown? What procedures have you or would you recommend be put into place to avoid a recurrence of this situation?

2. Have you ascertained whether County officials were advised of terrorist activity by an FBI agent and, if so, the identity of that agent?

3. If County officials were not advised of terrorist activity by an FBI agent, have you inquired as to why they misrepresented this fact? If the lockdown was not as a response to a terrorist threat, why did it take place? Did any manipulation of vote tallies occur?

B. ***Perry County Election Counting Discrepancies*** – The House Judiciary Committee Democratic staff has received information indicating discrepancies in vote tabulations in Perry County. For example, the sign-in book for the Reading S precinct indicates that approximately 360 voters cast ballots in that precinct.[9] In the same precinct, the sign-in book indicates that there were 33 absentee votes cast.[10] In sum, this would appear to mean that fewer than 400 total votes were cast in that precinct. Yet, the precinct's official tallies indicate that 489 votes were cast.[11] In addition, some voters' names have two ballot stub numbers listed next to their entries creating the appearance that voters were allowed to cast more than one ballot.[12]

---

[8]Ohio Secretary of State 2004 Presidential Vote Results, www.sos.state.oh.us/sos/results/2004/gen/pres.htm. Kerry received 25,399 votes out of 92,251 cast (27.53%).

[9]Sign-In Book, Reading S Precinct, Perry County Board of Elections, 11/02/04 General Election, copy on file with House Judiciary Committee Democratic Staff.

[10]*Id.*

[11]Copy of Signed Printout of Initial Perry County Voting Tallies, on file with House Judiciary Committee Democratic Staff.

[12]*Supra* note 9.

In another precinct, W Lexington G AB, 350 voters are registered according to the County's initial tallies.[13] Yet, 434 voters cast ballots.[14] As the tallies indicate, this would be an impossible 124% voter turnout.[15] The breakdown on election night was initially reported to be 174 votes for Bush, and 246 votes for Kerry.[16] We are advised that the Perry County Board of Elections has since issued a correction claiming that, due to a computer error, some votes were counted twice.[17] We are advised that the new tallies state that only 224 people voted, and the tally is 90 votes for Bush and 127 votes for Kerry.[18] This would make it appear that virtually every ballot was counted twice, which seems improbable.

In Monroe Township, Precinct AAV, we are advised that 266 voters signed in to vote on election day,[19] yet the Perry County Board of Elections is reporting that 393 votes were cast in that precinct,[20] a difference of 133 votes.

4. Why does it appear that there are more votes than voters in the Reading S precinct of Perry County?

5. What is the explanation for the fluctuating results in the W Lexington AB precinct?

6. Why does it appear that there are more votes than voters in the Monroe Township precinct AAV?

C. **Perry County Registration Peculiarities**

---

[13] *Id.*

[14] *Supra* note 11.

[15] *Id.*

[16] *Id.*

[17] Staff Interview with Election Volunteer, Dec. 1, 2004.

[18] *Id.*

[19] *Id.*

[20] *Supra* note 11.

In Perry County, there appears to be an extraordinarily high level voter registration, 91%; yet a substantial number of these voters have never voted and have no signature on file.[21] Of the voters that are registered in Perry County an extraordinarily large number of voters are listed as having registered in 1977, a year in which there were no federal elections.[22] Of these an exceptional number are listed as having registered on the exact same day: in total, 3,100 voters apparently registered in Perry County on November 8, 1977.[23]

7. Please explain why there is such a high percentage of voters in this County who have never voted and do not have signatures on file. Also, please help us understand why such a high number of voters in this County are shown as having registered on the same day in 1977.

D. **Unusual Results in Butler County**

In Butler County, a Democratic Candidate for State Supreme Court, C. Ellen Connally received 59,532 votes.[24] In contrast, the Kerry-Edwards ticket received only 54,185 votes, 5,000 less than the State Supreme Court candidate.[25] Additionally, the victorious Republican candidate for State Supreme Court received approximately 40,000 less votes than the Bush-Cheney ticket.[26] Further, Connally received 10,000 or more votes in excess of Kerry's total number of votes in five counties, and 5,000 more votes in excess of Kerry's total in ten others.[27]

---

[21] *Id.*

[22] Spreadsheet of Ohio Secretary of State Voter Registration Database, on file with the House Judiciary Committee Democratic Staff.

[23] *Id.*

[24] Election Results, *Cincinnati Enquirer*, Nov. 4, 2004.

[25] *Id.*

[26] *Id.*

[27] Unofficial Results, Ohio Secretary of State website, Nov.30, 2004. There are a number of peculiar results that appear to run counter to the established principle that downballot party candidates receive far less votes than the presidential candidate of the same party. These results also are counter to the statewide trend in Ohio, where Kerry received 48.5% of the vote to 46.6% for Connally. In Adams County, John Kerry barely received more votes than Connally, 4189 to 4010. In Auglaize County, Connolly received more votes than Kerry, 7312 to 5729. Similar results were tallied in Brown County, with Kerry receiving 7058 votes to Connally's 7407; in Clermont County, Connally received 29,464 to Kerry's 25,318; in Darke County, Connally

It must also be noted that Republican judicial candidates were reportedly "awash in cash," with more than $1.4 million and were also supported by independent expenditures by the Ohio Chamber of Commerce.[28]

While you may have found an explanation for these bizarre results, it appears to be wildly implausible that 5,000 voters waited in line to cast a vote for an underfunded Democratic Supreme Court candidate and then declined to cast a vote for the most well-funded Democratic Presidential campaign in history. We would appreciate an answer to the following:

> 8. Have you examined how an underfunded Democratic State Supreme Court candidate could receive so many more votes in Butler County than the Kerry-Edwards ticket? If so, could you provide us with the results of your examination? Is there any precedent in Ohio for a downballot candidate receiving on a percentage or absolute basis so many more votes than the Presidential candidate of the same party in this or any other presidential election? Please let us know if any other County in Ohio registered such a disparity on a percentage or absolute basis.

E. **Unusual Results in Cuyahoga County**

Precincts in Cleveland have reported an incredibly high number of votes for third party candidates who have historically received only a handful of votes from these urban areas.[29] For example, precinct 4F in the 4th Ward cast 290 votes for Kerry, 21 for Bush, and 215 for Constitution Party candidate Michael Peroutka.[30] In 2000, the same precinct cast less than 8 votes for all third party candidates combined.[31]

---

received 8817 to Kerry's 6683; in Highland County, Connally received 6119 to Kerry's 6012; in Mercer County, Connally received 6607 to Kerry's 4924; in Miami County, Connally received 17,206 to Kerry's 17,039; in Putnam County, Connally received 4,785 votes to Kerry's 4,348.

[28] T.C. Brown, *Republicans sweep in state high court*, CLEVELAND PLAIN DEALER, Nov. 3, 2004.

[29] Juan Gonzalez, *Ohio Tally Fit for Ukraine*, NEW YORK DAILY NEWS, Nov. 30, 2004.

[30] *Id.*

[31] *Id.*

This pattern is found in at least 10 precincts through throughout Cleveland in 2004, awarding hundreds of unlikely votes to the third party candidate.[32] Notably, these precincts share more than a strong Democratic history: the use of a punch card ballot. In light of these highly unlikely results, we would like to know the following:

9. Have you investigated whether the punch card system used in Cuyahoga County led to voters accidentally voting for third party candidates instead of the Democratic candidate they intended? If so, what were the results? Has a third party candidate ever received such a high percentage of votes in these precincts.

10. Have you found similar problems in other counties? Have you found similar problems with other voting methods?

F. **Spoiled Ballots**

According to post election canvassing, many ballots were cast without any valid selection for president. For example, two precincts in Montgomery County had an undervote rate of over 25% each – accounting for nearly 6,000 voters who stood in line to vote, but purportedly declined to vote for president.[33] This is in stark contrast to the 2% of undervoting county-wide.[34] Disturbingly, predominantly Democratic precincts had 75% more undervotes than those that were predominantly Republican.[35] It is inconceivable to us that such a large number of people supposedly did not have a preference for president in such a controversial and highly contested election.

Considering that an estimated 93,000 ballots were spoiled across Ohio,[36] we would like to know the following:

11. How many of those spoiled ballots were of the punch card or optical scan format and could therefore be examined in a recount?

---

[32] *Id.*

[33] Ken McCall and Jim Bebbington, *Two precincts had high undercounts, analysis shows*, DAYTON DAILY NEWS, Nov. 18, 2004.

[34] *Id.*

[35] *Id.*

[36] Scott Hiaasen, *Like clinging chads, Kerry faithful hang on*, THE PLAIN DEALER, Nov. 6, 2004.

12. Of those votes that have a paper trail, how many votes for president were undercounted, or showed no preference for president? How many were overcounted, or selected more than one candidate for president? How many other ballots had an indeterminate preference?

13. Of the total 93,000 spoiled ballots, how many were from predominantly Democratic precincts? How many were from minority-majority precincts?

14. Are you taking steps to ensure that there will be a paper trail for all votes before the 2006 elections so that spoiled ballots can be individually re-examined?

G. **Franklin County Overvote** – On election day, a computerized voting machine in ward 1B in the Gahanna precinct of Franklin County recorded a total of 4,258 votes for President Bush and 260 votes for Democratic challenger, John Kerry.[37] However, there are only 800 registered voters in that Gahanna precinct, and only 638 people cast votes at the New Life Church polling site.[38] It was since discovered that a computer glitch resulted in the recording of 3,893 extra votes for President George W. Bush.[39]

Fortunately, this glitch was caught and the numbers were adjusted to show President Bush's true vote count at 365 votes to Senator Kerry's 260 votes.[40] However, many questions remain as to whether this kind of malfunction happened in other areas of Ohio. To help us clarify this issue, we request that you answer the following:

15. How was it discovered that this computer glitch occurred?

16. What procedures were employed to alert other counties upon the discovery of the malfunction?

17. Can you be absolutely certain that this particular malfunction did not occur in other counties in Ohio during the 2004 Presidential election? How?

18. What is being done to ensure that this type of malfunction does not happen again in the future?

---

[37] Jim Woods, *In one precinct, Bush's tally was supersized by a computer glitch*, THE COLUMBUS DISPATCH, Nov. 5, 2004.

[38] *Id.*

[39] *Id.*

[40] *Glitch gave Bush extra votes in Ohio*, THE ASSOCIATED PRESS, Nov. 5, 2004.

H. **Miami County Vote Discrepancy** – In Miami County, with 100% of the precincts reporting on Wednesday, November 3, 2004, President Bush had received 20,807 votes, or 65.80% of the vote, and Senator Kerry had received 10,724 votes, or 33.92% of the vote.[41] Miami reported 31,620 voters. Inexplicably, nearly 19,000 new ballots were added after all precincts reported, boosting President Bush's vote count to 33,039, or 65.77%, while Senator Kerry's vote percentage stayed exactly the same to three one-hundredths of a percentage point at 33.92%.[42]

Roger Kearney of Rhombus Technologies, Ltd., the reporting company responsible for vote results of Miami County, has stated that the problem was not with his reporting and that the additional 19,000 votes came before 100% of the precincts were in.[43] However, this does not explain how the vote count could change for President Bush, but not for Senator Kerry, after 19,000 new votes were added to the roster. To help us better understand this anomaly, we request that you answer the following:

19. What is your explanation as to the statistical anomaly that showed virtually identical ratios after the final 20-40% of the vote came in? In your judgment, how could the vote count in this County have changed for President Bush, but not for Senator Kerry, after 19,000 new votes were added to the roster?

20. Are you aware of any pending investigations into this matter?

I. **Mahoning County Machine Problems** – In Mahoning County, numerous voters reported that when they attempted to vote for John Kerry, the vote showed up as a vote for George Bush. This was reported by numerous voters and continued despite numerous attempts to correct their vote.[44]

21. Please let us know if you have conducted any investigation or inquiry of machine voting problems in the state, including the above described problems in Mahoning County, and the results of this investigation or inquiry.

---

[41]Bob Fitrakis, *None dare call it voter suppression and fraud*, THE FREE PRESS, Nov. 7, 2004.

[42]Ohio Secretary of State 2004 Presidential Vote Results, www.sos.state.oh.us/sos/results/11-02-04.htm.

[43]Bob Fitrakis, *And so the sorting and discarding of Kerry votes begins,* THE FREE PRESS, Nov. 10, 2004.

[44]Bob Fitrakis and Harvey Wasserman, *New Ohio Voter Transcripts Feed Floodtide of Doubt about Republican Election Manipulation*, THE FREE PRESS, Nov. 25, 2004.

II. Procedural Irregularities

A. **Machine Shortages**

Throughout predominately Democratic areas in Ohio on election day, there were reports of long lines caused by inadequate numbers of voting machines. Evidence introduced in public hearings indicates that 68 machines in Franklin County were never deployed for voters, despite long lines for voters at that county,[45] with some voters waiting from two to seven hours to cast their vote.[46] The Franklin County Board of Elections reported that 68 voting machines were never placed on election day, and Franklin County BOE Director Matt Damschroder admitted on November 19, 2004 that 77 machines malfunctioned on Election Day.[47] It has come to our attention that a county purchasing official who was on the line with Ward Moving and Storage Company, documented only 2,741 voting machines delivered through the November 2 election day.[48] However, Franklin County's records reveal that they had 2,866 "machines available" on election day.[49] This would mean that amid the two to seven hour waits in the inner city of Columbus, at least 125 machines remained unused on Election Day.

Franklin County's machine allocation report clearly states the number of machines that were placed "By Close of Polls."[50] However, questions remain as to where these machines were placed and who had access to them throughout the day. Therefore, what matters is not how many voting machines were operating at the end of the day, but rather how many were there to service the people during the morning and noon rush hours.

---

[45]Bob Fitrakis, *Document reveals Columbus, Ohio voters waited hours as election officials held back machines*, THE FREE PRESS, Nov. 16, 2004.

[46]Bob Fitrakis, *Is there inner-city election suppression in Franklin County, Ohio?* THE FREE PRESS, Nov. 2, 2004.

[47]Bob Fitrakis, *How the Ohio Election Was Rigged for Bush*, THE FREE PRESS, Nov. 22, 2004.

[48]*Id.*

[49]Franklin County Board of Elections 2004 Election Abstract, www.co.franklin.oh.us/boe/content/electionAbstract.htm

[50]*Id.*

An analysis revealed a pattern of providing fewer machines to the Democratic city of Columbus, and more machines to the primarily Republican suburbs.[51] At seven out of eight polling places, observers counted only three voting machines per location.[52] According to the presiding judge at one polling site located at the Columbus Model Neighborhood facility at 1393 E. Broad St., there had been five machines during the 2004 primary.[53] Moreover, at Douglas Elementary School, there had been four machines during the spring primary.[54] In one Ohio voting precinct serving students from Kenyon College, some voters were required to wait more than eight hours to vote.[55] There were reportedly only two voting machines at that precinct. The House Judiciary Committee staff has received first hand information confirming these reports.[56]

Additionally, it appears that in a number of locations, polling places were moved from large locations, such as gyms, where voters could comfortably wait inside to vote to smaller locations where voters were required to wait in the rain.[57] We would appreciate answers to the following:

22. How much funding did Ohio receive from the federal government for voting machines?

23. What criteria were used to distribute those new machines?

24. Were counties given estimates or assurances as to how many new voting machines they would receive? How does this number compare to how many machines were actually received?

---

[51] *Id.*

[52] *Id.*

[53] *Id.*

[54] *Id.*

[55] Don Lothian, CNN.com, "All Eyes on Ohio," Nov. 3, 2004, www.cnn.com/2004/ALLPOLITICS/BLOG/11/02/ELECTION.BLOG/INDEX.HTM.

[56] Emails on file with House Judiciary Committee staff. A sampling include information about four hour waits at Precincts 35B and C in Columbus; seven hours waits for one voting machine per thousand voters, where the adjacent precinct had one station for 184 voters (this pattern was replicated in predominately African-American areas and areas with colleges); lines of four to five hours were "the order of the day in African American neighborhoods."

[57] *Id.*

25. What procedures were in place to ensure that the voting machines were properly allocated throughout Franklin and other counties? What changes would you recommend be made to insure there is a more equitable allocation of machines in the future?

B. Invalidated Provisional Ballots

As you know, just weeks before the 2004 Presidential election, you issued a directive to county election officials saying they are allowed to count provisional ballots only from voters who go to the correct precinct for their home address.[58] At the same time, it has been reported that fraudulent flyers were being circulated on official-looking letterhead telling voters the wrong place to vote,[59] phone calls were placed incorrectly informing voters that their polling place had changed,[60] "door-hangers" telling African-American voters to go to the wrong precinct,[61] and election workers sent voters to the wrong precinct.[62] In other areas, precinct workers refused to give any voter a provisional ballot.[63] And in at least one precinct, election judges told voters that they may validly cast their ballot in any precinct, leading to any number of disqualified provisional ballots.[64]

In Hamilton County, officials have carried this problematic and controversial directive to a ludicrous extreme: they are refusing to count provisional ballots cast at the correct polling place if they were cast at the wrong table in that polling place.[65] It seems that some polling places

---

[58]Mark Niquette, *Ohio won't count ballots cast at incorrect precincts,* COLUMBUS DISPATCH, Sept. 25, 2004.

[59]Grant Segall, *Voters Told to Ignore Hoax*, THE PLAIN DEALER, Oct. 29, 2004.

[60]David Finkel, *Now They're Registered, Now They're Not*, WASHINGTON POST, Oct. 31, 2004.

[61]Email from Cincinnati-area election volunteer, on file with the House Judiciary Committee Democratic Staff.

[62]Connie Mabin, *Buzzing Bees, Long Lines Among Hurdles at Ohio Polls*, THE ASSOCIATED PRESS, Nov. 2, 2004.

[63]Email from Cleveland-area election volunteer, on file with the House Judiciary Committee Democratic Staff.

[64]Jon Craig, *Election day Aftermath*, THE COLUMBUS DISPATCH, Nov. 25, 2004.

[65]Tony Cook,*Final ballots offer no changes,* CINCINNATI POST, Nov. 27, 2004.

contained multiple precincts which were located at different tables.[66] Now, 400 such voters in Hamilton county alone will be disenfranchised as a result of your directive.

26. Have you directed Hamilton County and all other counties not to disqualify provisional ballots cast at the correct polling place simply because they were cast at the wrong precinct table?

27. While many election workers received your directive that voters may cast ballots only in their own precincts, some did not. How did you inform your workers, and the public, that their vote would not be counted if cast in the wrong precinct? How many votes were lost due to election workers telling voters they may vote at any precinct, in direct violation of your ruling?

28. Your directive was exploited by those who intentionally misled voters about their correct polling place, and multiplied the number of provisional ballots found invalid. What steps have you or other officials in Ohio taken to investigate these criminal acts? Has anyone been referred for prosecution? If so, what is the status of their cases?

29. How many provisional ballots were filed in the presidential election in Ohio? How many were ultimately found to be valid and counted? What were the various reasons that these ballots were not counted, and how many ballots fall into each of these categories? Please break down the foregoing by County if possible.

C. **Directive to Reject Voter Registration *Forms Not Printed on White, Uncoated Paper of Not Less Than* 80 lb Text Weight**

On September 7, you issued a directive to county boards of elections commanding such boards to reject voter registration forms not "printed on white, uncoated paper of not less than 80 lb. text weight."[67] Instead, the county boards were to follow a confusing procedure where the voter registration form would be treated as an application for a form and a new blank form would be sent to the voter.[68] While you reversed this directive, you did not do so until September 28.[69] In the interim, a number of counties followed this directive and rejected otherwise valid voter

---

[66] *Id.*

[67] Ohio Secretary of State Press release, "Blackwell Issues Voter Registration Directive," Sept. 9, 2004, http://www.sos.state.oh.us/sos/news/release/09-09-04.htm.

[68] *Id.*

[69] Catherine Candisky, *Blackwell ends paper chase, Some could be unable to vote because of flap over registration forms*, COLUMBUS DISPTACH, Sept. 29, 2004.

registration forms.[70] There appears to be some further confusion about the revision of this order which resulted in some counties being advised of the change by the news media.[71]

30. How did you notify county boards of elections of your initial September 7 directive?

31. How did you notify county boards of elections of your September 28 decision to revise that directive?

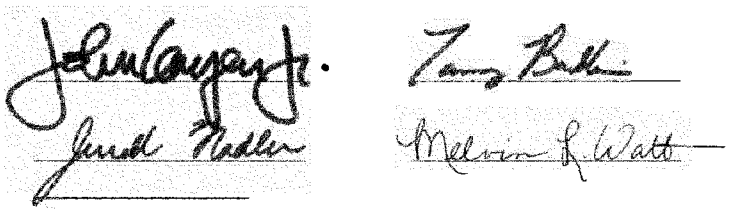
32. Have you conducted an investigation to determine how many registration forms were rejected as a result of your September 7 directive? If so, how many?

33. Have you conducted an investigation to determine how many voters who had their otherwise valid forms rejected as a result of your September 7 directive subsequently failed to re-register? If so, how many?

34. Have you conducted an investigation to determine how many of those voters showed up who had their otherwise valid forms rejected to vote on election day and were turned away? If so, how many?

We await your prompt reply. To the extent any questions relate to information not available to you, please pass on such questions to the appropriate election board or other official. Please respond to 2142 Rayburn House Office Building, Washington, DC 20515 by December 10. If you need more time to investigate and respond to some of these inquiries, we would welcome a partial response by that date and a complete response within a reasonable period of time thereafter. If you have any questions about this inquiry, please contact Perry Apelbaum or Ted Kalo of the House Judiciary Committee Democratic Staff at (202) 225-6504.

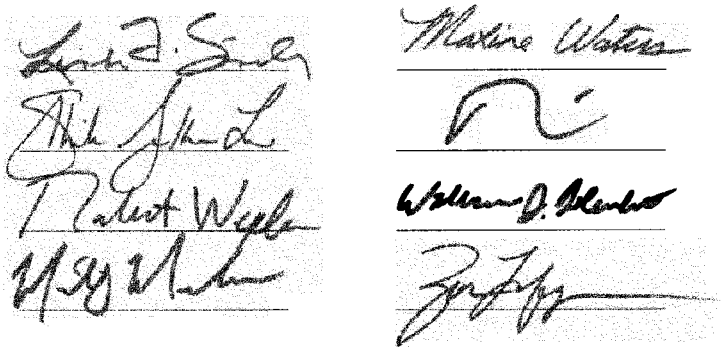
Sincerely,



[70] *Id.*

[71] *Id.*

The Honorable J. Kenneth Blackwell
Page Fifteen
December 2, 2004



F. JAMES SENSENBRENNER, JR., Wisconsin
CHAIRMAN

HENRY J. HYDE, Illinois
HOWARD COBLE, North Carolina
LAMAR S. SMITH, Texas
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
STEVE CHABOT, Ohio
WILLIAM L. JENKINS, Tennessee
CHRIS CANNON, Utah
SPENCER BACHUS, Alabama
JOHN N. HOSTETTLER, Indiana
MARK GREEN, Wisconsin
RIC KELLER, Florida
MELISSA A. HART, Pennsylvania
JEFF FLAKE, Arizona
MIKE PENCE, Indiana
J. RANDY FORBES, Virginia
STEVE KING, Iowa
JOHN R. CARTER, Texas
TOM FEENEY, Florida
MARSHA BLACKBURN, Tennessee

ONE HUNDRED EIGHTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951
http://www.house.gov/judiciary

JOHN CONYERS, JR., Michigan
RANKING MINORITY MEMBER

HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
JERROLD NADLER, New York
ROBERT C. "BOBBY" SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
MARTIN T. MEEHAN, Massachusetts
WILLIAM D. DELAHUNT, Massachusetts
ROBERT WEXLER, Florida
TAMMY BALDWIN, Wisconsin
ANTHONY D. WEINER, New York
ADAM B. SCHIFF, California
LINDA T. SÁNCHEZ, California

December 3, 2004

The Honorable J. Kenneth Blackwell
Ohio Secretary of State
180 East Broad Street, 16th Floor
Columbus, OH 43215

Dear Secretary Blackwell:

The purpose of this letter is two-fold. First, I am inviting you to participate in a very important forum, hosted by several House Members, on Wednesday, December 8 at 10:00 a.m, in Room 2237 of the Rayburn House Office Building. The forum, "Preserving Election Integrity: What Went Wrong in Ohio," will explore many of the issues identified in the letter I sent yesterday with other Democratic members of the Judiciary Committee. Featured panelists include Reverend Jesse Jackson, founder of Rainbow/Push Coalition, Ralph Neas, President of People for the American Way and John Bonifaz, General Counsel of the National Voting Institute. I hope that you, too, will join us in examining the outstanding issues from your State that continue to raise concerns about the fairness and effectiveness of our electoral system.

In addition, as follow-up to the letter I sent yesterday, I would like to bring two additional concerns to your attention.

First, in Section II(C) of our letter, we raised the problem of a directive you issued on September 7 commanding county elections boards to reject voter registration forms "not printed on white, uncoated paper of not less than 80 lb. text weight." We noted that you reversed the directive on September 28, but in the interim a number of counties followed the directive and rejected otherwise valid voter registration forms. It has now come to our attention that in at least one county, Delaware County, the directive is still posted on the Internet. Attached is a screen capture of this directive for your review. This raises the question of whether Delaware County rejected voter registration forms after your rescinded the directive.

Second, I would like to follow up regarding the investigation your office possibly conducted of the Auglaize County Board of Elections. Specifically, on October 21, it was reported that Joe McGinnis, an employee at Election Systems and Software, the company that provides the voting system in Auglaize County, violated protocol by accessing the main

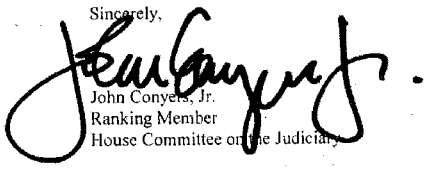
computer that was used to create the ballot and compile election results. Your office placed the Auglaize County Board of Elections on administrative oversight, but, to date, there has been no word as to the results of any such investigation.

35. Did you or your office, in fact, conduct an investigation into this matter? If so, did you find impropriety in the conduct of Joe McGinnis?

36. Did you find any other impropriety, either by McGinnis or any other employee of Election Systems and Software, that could have affected vote counts in the county? Did you find any impropriety by any employee of the Auglaize County Board of Elections?

Again, thank you for your prompt attention to this matter. If you have any questions about this inquiry, please contact Perry Apelbaum or Ted Kalo of the House Judiciary Committee Democratic Staff at (202) 225-6504.

Sincerely,



John Conyers, Jr.
Ranking Member
House Committee on the Judiciary

U. S. Department of Justice

Civil Rights Division

Deputy Assistant Attorney General

Washington, D.C. 20530

April 15, 2005

VIA FACSIMILE AND REGULAR MAIL

Honorable Janice K. Brewer
Secretary of State
State of Arizona
1700 West Washington Street, 7th Floor
Phoenix, Arizona 85007-2888

Dear Secretary Brewer:

I am writing in response to your letter of April 5 to Steven G. Bradbury, Principal Deputy Assistant Attorney General in the Office of Legal Counsel, requesting a formal opinion from the Department of Justice on certain issues relating to the Help America Vote Act of 2002 ("HAVA"), 42 U.S.C. 15301-15545. Because the Office of Legal Counsel is not authorized to provide legal advice to persons outside the Executive Branch of the federal government, Mr. Bradbury has forwarded the request to the Civil Rights Division.

Although the Department of Justice states its formal positions with respect to the statutes it enforces only through case-by-case litigation, we do on occasion offer our general views on the manner in which we intend to enforce a particular statute or set of laws. As you know, HAVA vests the Attorney General with the responsibility of enforcing Title III of HAVA, which imposes uniform and nondiscriminatory election technology and administration requirements on the 55 States and Territories. The Attorney General, in turn, has delegated those enforcement functions to the Civil Rights Division. In light of this authority, we will attempt to answer the question posed in your letter to the extent we can, although it must be emphasized that the opinions expressed here are not binding.

Your letter focuses on the requirements of HAVA Section 302(a), 42 U.S.C. 15482(a), as that section relates to provisional ballots. Specifically, you question whether, under this section, it is permissible for a state to mandate that potential voters show identification at the polls prior to receiving a provisional ballot.

Section 302(a) of HAVA requires that a provisional ballot be given to individuals (i) whose eligibility is challenged by election officials, or (ii) whose name does not appear on the

official list of eligible voters for the polling place, if the "individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office." Section 302(a) then provides a series of steps that should be taken by poll officials to transmit the ballot and voter information to election officials for "prompt verification." Whether the individual is eligible to vote, and whether the provisional ballot will be counted, are matters to be determined by state and local election officials "in accordance with State law." *See* HAVA Section 302(a)(4).

Two other sections of HAVA are also relevant to your question. Section 304, 42 U.S.C. 15484, specifically states that "[t]he requirements established by this title are minimum requirements and nothing in this title shall be construed to prevent a State from establishing election technology and administration requirements that are more strict." Further, Section 305, 42 U.S.C. 15485, provides that "[t]he specific choices on the methods of complying with the requirements of this title shall be left to the discretion of the State."

Taken together, all of these provisions make it clear that the determination of an individual's eligibility to vote is left to the states, and while Title III establishes minimum standards, states may impose stricter requirements as long as those requirements are uniform and nondiscriminatory. If a state such as Arizona wishes to impose identification requirements that are stricter than HAVA, it may do so without violating the statute. This flexibility includes the right to impose stricter requirements for voter eligibility (including eligibility to receive a provisional ballot).

The major purpose of Section 302(a) is to allow individuals to vote who have taken all necessary steps to register to vote but whose registrations were not completed by election officials (or whose names were not added to the voter registration list) due to some administrative error. If a State requires a provisional voter, who has affirmed that he is registered and eligible to vote, to provide additional information (*e.g.*, residence address, birth date, location where he attempted to register to vote, etc.) that may be needed for the jurisdiction to verify that the individual actually did register and is truly eligible to vote, nothing in HAVA would stand in the State's way. In other words, a State may refuse to issue a provisional ballot to an individual who refuses to provide such information.

While HAVA was passed by Congress to regulate federal elections, Sections 304 and 305 illustrate that Congress was well aware that the Constitution -- in particular, Art. I, § 4, cl. 1 -- explicitly commits the regulation of voting to the states. Indeed, a State may "provide a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns." *Roudebush v. Hartke*, 405 U.S. 15, 23 (1972); *see also Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 217 (1986) (States exercise "broad power to prescribe the 'Time, Places and Manner of holding Elections for Senators and Representatives,' which power is matched by state control over the election process for states offices."). In light of this broad grant of power, "state legislatures may without transgressing the Constitution impose extensive restrictions on voting." *Griffin v. Roupas*, 385 F.3d 1128, 1130 (7th Cir. 2004).

In conclusion, it is our considered judgment that neither HAVA nor any other provision of federal law preempts states from imposing identification requirements at the polls, including identification requirements for the receipt of provisional ballots. In fact, insuring the security and integrity of elections is a logical and entirely legitimate objective of state regulation of the election process, which an identification requirement naturally facilitates.

We hope that this is responsive to your questions. If you have any additional concerns, please do not hesitate to contact us.

Sincerely,

Sheldon T. Bradshaw
Principal Deputy Assistant Attorney General

U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20035*

September 1, 2005

Honorable Janice K. Brewer
Secretary of State
State of Arizona
1700 West Washington Street, 7th Floor
Phoenix, AZ 85007-2888

Dear Secretary Brewer:

I am writing in further response to your April 5, 2005 correspondence to Steven G. Bradbury, Principal Deputy Assistant Attorney General in the Office of Legal Counsel, requesting a formal opinion from the Department of Justice on certain issues relating to the Help America Vote Act of 2002 ("HAVA"), 42 U.S.C. 15301-15545. As you know, because the Office of Legal Counsel is not authorized to provide legal advice to persons outside the Executive Branch of the federal government, your request was assigned to the Civil Rights Division. Although we initially replied to you in a letter dated April 15, 2005, we feel it necessary to clarify our earlier interpretation in order to ensure an accurate representation of the Justice Department's views.

At the outset, let me reiterate that, while the Department of Justice does on occasion offer its general views on the manner in which it intends to enforce a particular statute or set of laws, the Department states its formal positions with respect to the statutes it enforces only through case-by-case litigation. HAVA vests the Attorney General with the responsibility of enforcing Title III of HAVA, which imposes uniform and nondiscriminatory election technology and administration requirements on the 55 States and Territories. The Attorney General, in turn, has delegated those enforcement functions to the Civil Rights Division. In light of this authority, we will attempt to answer the question posed in your letter to the extent we can, but we emphasize that the opinions expressed here are not binding.

Your letter focused on the requirements of HAVA related to provisional ballots in elections for Federal office. Specifically, you inquired whether it is permissible under HAVA for a state to mandate that potential voters show identification at the polls prior to receiving a provisional ballot. The short answer is that HAVA requires States to allow voters who meet certain specified conditions the opportunity to cast a provisional ballot. States, however, are free to prescribe their own rules for deciding whether to count those provisional ballots. Thus, if an

individual who casts a provisional ballot does not comply with a State's identification requirement, the State is under no obligation to count the ballot. *See Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565, 576-78 (6th Cir. 2004); *Florida Democratic Party v. Hood*, 342 F. Supp. 2d 1073, 1079-81 (N.D. Fla. 2004); *Hawkins v. Blunt*, No. 04-4177, slip op. at 17 (W.D. Mo. Oct. 12, 2004).

HAVA Section 302(a), 42 U.S.C. 15482(a), sets forth the eligibility requirements and mechanics for administering provisional ballots. In relevant part, this statute provides:

> PROVISIONAL VOTING REQUIREMENTS --- If an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to cast a provisional ballot as follows:
>
> (1) An election official at the polling place shall notify the individual that the individual may cast a provisional ballot in that election.
>
> (2) The individual shall be permitted to cast a provisional ballot at that polling place upon the execution of a written affirmation by the individual before an election official at the polling place stating that the individual is--
>
> (A) a registered voter in the jurisdiction in which the individual desires to vote; and
>
> (B) eligible to vote in that election.
>
> (3) An election official at the polling place shall transmit the ballot cast by the individual or the voter information contained in the written affirmation executed by the individual under paragraph (2) to an appropriate State or local election official for prompt verification under paragraph (4).
>
> (4) If the appropriate State or local election official to whom the ballot or voter information is transmitted under paragraph (3) determines that the individual is eligible under State law to vote, the individual's provisional ballot shall be counted as a vote in that election in accordance with State law.
>
> * * *

Taken together, we construe these provisions of HAVA to require that individuals be permitted to cast a provisional ballot if they present themselves to vote at a polling place in an

election for Federal office and either: (i) do not appear on the official list of eligible voters for that polling place but claim to be registered, or (ii) have their eligibility challenged by an election official, *so long as* they execute a written affirmation to the effect that they are registered and eligible to vote in the jurisdiction in which they seek to cast their ballot.[1]

All that having been said, whether an individual is allowed to *cast* a provisional ballot and whether that provisional ballot must be *counted* are two distinct questions. There is a *federal law* requirement in HAVA that, in elections for Federal office, an individual who meets the conditions set forth in Sections 302(a) or 303(b) must be offered, and allowed to cast, a provisional ballot. However, HAVA further provides that the question of whether the person casting a provisional ballot is actually eligible to vote, and whether the cast provisional ballot should be counted, are to be determined by the appropriate state or local election official *pursuant to state law*. Thus, if a State adopts a law providing that no voter, including a provisional voter, is eligible to have his/her ballot counted unless proper identification is presented to election officials on or after election day, the State is entirely free to do so.[2]

In addition to tracking the statutory text, the interpretation articulated herein fulfills the purposes behind HAVA's provisional ballot requirements, *i.e.*, ensuring that individuals are not deprived of the opportunity to vote because of some administrative error or delay or overzealous poll official, while at the same time respecting the traditional authority of the States to regulate the administration of elections. *Cf. Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 217 (1986) (States exercise "broad power to prescribe the 'Times, Places and Manner of holding Elections for Senators and Representatives,' . . . which power is matched by state control over the election process for state offices."); *Roudebush v. Hartke*, 405 U.S. 15, 24 (1972) (States may "provide a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns.").

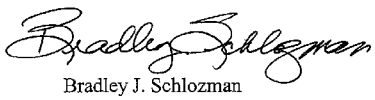
We apologize for any confusion generated by our earlier response. We hope that this letter clarifies our answer and is responsive to your questions. If you have any additional concerns, please do not hesitate to contact us.

---

[1] Incidentally, also included in this category of persons entitled to a provisional ballot are individuals who present themselves to vote at a polling place in an election for Federal office who are covered by, and have not met, the HAVA identification requirements on or before election day. *See* HAVA Section 303(b), 42 U.S.C. 15483(b) (requiring presentation of identification at the polls by certain individuals who registered to vote for the first time by mail).

[2] On this point, we note that the Department of Justice recently pre-cleared Arizona's election law amendments adopted by the State as part of Proposition 200, which mandate that individuals seeking to vote must present certain specified forms of identification at the time they cast their ballot. *See* Ariz. Rev. Stat. 16-579(A).

Sincerely,



Bradley J. Schlozman
Acting Assistant Attorney General

U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

October 29, 2004

The Honorable Susan J. Dlott
Judge of the United States District Court
for the Southern District of Ohio
Potter Stewart U.S. Courthouse
Room 829
100 East Fifth Street
Cincinnati, OH 45202

RE: *Spencer* v. *Blackwell*, Case No. 04CV738

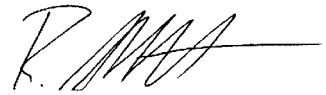
Dear Judge Dlott:

The United States writes to direct the court's attention to the Help America Vote Act of 2002 (HAVA), 42 U.S.C. 15301 et seq. Under this relatively new statute, state and local election officials must permit any individual whose name does not appear on the official registration list for the polling place or *whose eligibility to vote is called into question* to cast a provisional ballot if such individual declares that he "is a registered voter in the jurisdiction in which [he] desires to vote and that [he] is eligible to vote in an election for Federal office." 42 U.S.C. 15482(a). Thus, we emphasize that if voters are in fact challenged on November 2 under a statute like that in force in Ohio, as a matter of federal law those challenged voters must be given the opportunity to cast a provisional ballot even if they are unable to answer the specific questions posed by election judges.

We bring this provision to the court's attention because HAVA's provisional ballot requirement is relevant to the balance between ballot access and ballot integrity. Challenge statutes such as those at issue in Ohio are part of this balance. They are intended to allow citizens and election officials, who have information pertinent to the crucial determination of whether an individual possesses all of the necessary qualifiers to being able to vote, to place that information before the officials charged with making such determinations. Restricting the ability of citizens to make challenges when they have such information would undermine the ability of election officials to enforce their own state laws that govern the eligibility for voting and lessen their ability to examine potential voters under applicable federal standards for federal elections. See, e.g., 18 U.S.C. 611 (making it a federal crime for a non-citizen to vote in an election where a candidate for federal office is on the ballot).

In this regard, we observe that nothing in the Voting Rights Act facially condems challenge statutes. Section 2 of the Act provides, in relevant part, that "[n]o voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." 42 U.S.C. 1973(a). Thus, a challenge statute permitting objections based on United States citizenship, residency, precinct residency, and legal voting age like those at issue here are not subject to facial challenge (as opposed to as applied challenge) under the Act because these qualifications are not tied to race. See Mallory v. Eyrich, 839 F.2d 275, 278 (6th Cir. 1988) (noting that Section 2 was intended "to banish the blight of racial discrimination in voting").

Respectfully submitted,



R. Alexander Acosta
Assistant Attorney General

cc Jim Petro
Alphonse Gerhardstein

June 11, 2007

The Honorable Diane Feinstein
The Honorable Bob Bennett
Senate Committee on Rules and Administration
SR-305 Russell Senate Office Building
Washington, DC 20510

Dear Chairperson Feinstein and Ranking Member Bennett:

As former career professionals in the Voting Section of the Department of Justice's Civil Rights Division, we urge you to reject the nomination of Hans A.von Spakovsky to the Federal Election Commission (FEC). Prior to his current role as a recess appointee to the FEC, Mr. von Spakovsky oversaw the Voting Section as Voting Counsel to the Assistant Attorney General of the Civil Rights Division from early in 2003 until December, 2005. While he was at the Civil Rights Division, Mr. von Spakovsky played a major role in the implementation of practices which injected partisan political factors into decision-making on enforcement matters and into the hiring process, and included repeated efforts to intimidate career staff. Moreover, he was the point person for undermining the Civil Rights Division's mandate to protect voting rights. Foremost amongst his actions was his central decision-making role on a matter where he clearly should have recused himself. We urge you to use this confirmation process as an opportunity to thoroughly examine Mr. von Spakovsky's tenure at the Department of Justice and how his commitment to party over country will affect his decision making at the FEC.

Each of us came to the Voting Section to participate in the crucial role the Department of Justice plays in protecting all Americans without fear or favor. We saw this as an honor. Our commitment to public service was grounded in the belief that every American should have an equal opportunity to participate in our political process. We sought to work for the Civil Rights Division because of our patriotism, because of the honor of service and because of our commitment to the historic and heroic work of our predecessors in the Division. We are deeply disturbed that the tradition of fair and vigorous enforcement of this nation's civil rights laws and the reputation for expertise and professionalism at the Division and the Department has been tarnished by partisanship. Over the past five years, the priorities of the Voting Section have shifted from its historic mission to enforce the nation's civil rights laws without regard to politics, to pursuing an agenda which placed the highest priority on the partisan political goals of the political appointees who supervised the Section. We write to urge you not to reward one of the architects of that unprecedented and destructive change with another critical position enforcing our country's election laws.

During his three years in the front office of the Civil Rights Division, Mr. von Spakovsky assumed primary responsibility for the day to day operation of the Voting Section. His superiors gave him the authority to usurp many of the responsibilities of the career section chief and institute unprecedented policies that have led to a decimation of the Section and its historic and intellectual resources.

Personnel management decisions in place at the Justice Department were abandoned during Mr. von Spakovsky's tenure. Rules designed to shield the civil service from the political winds of changing administrations were cast aside in favor of a policy designed to permit partisanship to be inserted into career hiring decisions. In the past, career managers took primary responsibility for the hiring decisions of the civil service. During Mr. von Spakovsky's tenure that changed. Career managers were shut out of the process and criteria for hiring career staff shifted from rewarding legal capacity, experience and especially commitment to civil rights enforcement, to prioritizing a candidate's demonstrated fidelity to the partisan interests of the front office. Mr. von Spakovsky vigorously carried out this policy in hiring interviews he conducted.

Mr. von Spakovsky also corrupted the established personnel practices that led to a productive working environment within the Section. He demanded that the Chief of the Section alter performance evaluations for career professionals because of disagreements with the legal or factual conclusions of career attorneys and differences with the recommendations they made, not the skill and professionalism with which these attorneys did their jobs. Such changes in performance evaluations by political appointees had never occurred in the past. There is good reason for giving deference to the section chief's judgment in performance given that political appointees lack the day to day work experience that a section chief possesses in his work with all members of the section. Not surprisingly, actions such as these undermined Section morale.

The matter which best demonstrates Mr. von Spakovsky's inappropriate behavior was his supervision of the review of a Georgia voter ID law in the summer of 2005. It demonstrates the unprecedented intrusion of partisan political factors into decision-making, the cavalier treatment of established Section 5 precedent of the Voting Section, and the unwarranted and vindictive retaliation against Voting Section personnel who disagreed with him on this matter.

Prior to his coming to the Civil Rights Division in 2001, Mr. von Spakovsky had vigorously advocated the need to combat the specter of voter fraud through restrictive voter identification laws. In testimony before legislative bodies and in his writings, Mr. von Spakovsky premised his conclusions upon the notion - not well-supported at the time and now discredited - that there was a widespread problem with ineligible voters streaming into the polling place to influence election outcomes. In this same period, starting in 1994, the Voting Section had on several occasions reviewed other voter ID laws pursuant to its responsibility under § 5 of the Voting Rights Act, to determine if they had a negative impact on the ability of minority voters to participate in elections. Precedent from these prior reviews was clear: changes requiring voters to provide government-issued photo identification without permitting voters to attest to their identity if they did not have the required ID have a greater negative impact on minority voters

than white voters because minority voters are less likely to have the government issued photo identification required by these laws.

Despite his firm position on voter ID laws and his partisan ties to his home state of Georgia, Mr. von Spakovsky refused to recuse himself from considering a Georgia law that would be the most restrictive voter identification law in the country. To the contrary, he was assigned the task of managing the process by the front office. Most disturbing was that just before the Department began consideration of the Georgia law, Mr. von Spakovsky published an article in a Texas law journal advocating for restrictive identification laws. Possibly understanding the impropriety of a government official taking a firm stand on an issue where he was likely to play a key role in the administrative decision concerning that issue, as the Department does under § 5, Mr. von Spakovsky published the article under a pseudonym, calling himself "Publius." Such a situation -- where the position he espoused in an article that had just been published is directly related to the review of the Georgia voter ID law -- requires recusal from Section 5 review of this law, either by Mr. von Spakovsky or by his superiors. No such action was taken.

After careful review of the Georgia voter ID law, career staff responsible for the review came to a near unanimous decision, consistent with the precedent established by the Department in previous reviews; that the Georgia provision would negatively affect minority voting strength. Four of the five career professionals on the review team agreed. The one who did not had almost no experience in enforcing § 5 and had been hired only weeks before the review began through the political hiring process described above. The recommendation to object to the law, detailed in a memo exceeding 50 pages was submitted on August 25, 2005. The next day, Georgia submitted corrected data on the number of individuals who had state-issued photo identification. The career review team was prevented by Mr. von Spakovsky from analyzing this data and incorporating the corrected data into their analysis. Instead, there was an unnecessary rush to judgment and the law was summarily precleared on August 26, the same day the corrected data had been submitted. Subsequent analysis of this data by a Georgia political scientist revealed that hundreds of thousands voters did not have the required voter ID, a disproportionate number of whom were poor, elderly and, most importantly for the Voting Rights Act review, minorities. In short, this data provided further evidentiary support for the objection recommended by professional staff. Subsequently, a federal court in Georgia found that this law violated the poll tax provision of the Constitution.

The personnel fallout after this review is at least as disturbing as the decision-making process. The Deputy Chief for the Section 5 unit who led the review, a 28 year Civil Rights Division attorney with nearly 20 years in the Voting Section, was involuntarily transferred to another job without explanation. The three other professionals who recommended an objection left the Voting Section after enduring criticism and retaliation, while the new attorney who was the only one not to recommend an objection received a cash award. The Section 5 unit suffered serious morale problems and it has lost at least four analysts with more than 25 years of experience, all of whom are African-Americans. In addition, more than half of the Section's attorneys have left the Section since 2005.

Of equal concern, is an action taken against one of the career professionals on the Georgia review team, a career professional who had participated in the recommendation to object to the Georgia voter ID law. After the decision to preclear in August, 2005, this career employee filed a complaint with the Office of Professional Responsibility (OPR) directed at the inappropriate actions taken during this review, a complaint that remains pending, more than 18 months since it was filed. About three months later, Mr. von Spakovsky, along with Deputy Assistant Attorney General Bradley Schlozman, filed an OPR complaint against this employee. The complaint was based solely on emails that they had obtained from this person's records without his authorization. Such an intrusion of privacy is unprecedented in our experience and caused an increased level of distrust in the Voting Section. OPR recognized the frivolous nature of this complaint and dismissed it within three months.

Other decisions reflect similar inappropriate behavior. A unanimous recommendation to object to the unprecedented mid-decade redistricting plan that Texas submitted in 2003 by career staff was rejected by a team of political appointees that included Mr. von Spakovsky. Subsequently, the plan was found by the Supreme Court to violate the voting rights of Latino voters. Mr. von Spakovsky also rushed through a preclearance of the harsh and discriminatory Arizona voter ID and proof of citizenship law over the recommendation by career staff to seek more information to determine its impact on minority voters.

Mr. von Spakovsky's involvement concerning enforcement of the Help America Vote Act ("HAVA") raises several other concerns. He violated decades-long traditions and policies of the Voting Section against issuing advisory opinions by sending a series of letters to state officials which had the effect of forcing states to implement HAVA in an exceedingly restrictive way. For example, in one letter, he advocated for a policy keeping eligible citizens off the voter rolls for typos and other mistakes by election officials. When Washington State followed this advice, the rule was struck down by a federal court. He also usurped the role explicitly set forth in Section 214(a)(13) of HAVA that the Voting Section chief serve on the EAC Advisory Board, and exclusively handled, with no consultation of the section chief, all communications for the Division with the EAC. According to e-mails that have been made public, Mr. von Spakovsky tried to pressure the Chairman of the EAC, Paul deGregorio, to rescind a letter stating that Arizona had to accept federal voter registration forms that did not include documentary proof of citizenship. The emails further indicate that he proposed to the Chairman "trading" the EAC's rescinding the letter mentioned above for the Department's rescinding a letter the Civil Rights Division had earlier issued which improperly stated that Arizona voters had to provide identification before they could cast a provisional ballot. Mr. von Spakovsky's attempt to bargain over the interpretation of federal law was specifically criticized by Mr. DeGregorio.

Mr. von Spakovsky adopted the same restrictive approach during the 2004 election cycle when he once again broke with established Department policy by getting involved with contentious and partisan litigation on the eve of an election. Mr. von Spakovsky drafted legal briefs in lawsuits between the Republican and Democratic parties in three battleground states, Ohio, Michigan and Florida, just before the election, all in favor of the Republican party's position and included a position that the Civil Rights Division had never taken before with

regards to statutes it enforces, i.e. that there was no private right of action to enforce HAVA. These briefs ran counter to the well-established practice of the Civil Rights Division not to inject itself into litigation or election monitoring on the eve of an election where it could be viewed as expressing a political preference or could have an impact on a political dispute. Moreover, in another case between the Republican and Democratic parties which concerned an Ohio law that permitted political parties to challenge voters, he drafted a letter that was sent to the court which supported the Republican Party position even though the law did not implicate any statute that the Department enforces.

He also changed the enforcement direction of the Department regarding the National Voter Registration Act. In 2005, Mr. von Spakovsky introduced a new initiative to target states to demand that they purge their voter lists under Section 8 of the Act. This was done despite a lack of evidence that registration deadwood leads to invalid votes and instead of enforcing important federal requirements that states make voter registration more accessible to all its citizens. Moreover, the cases filed seeking large-scale purges were in states with a tight partisan split - like Missouri and New Jersey - rather than states like Texas and Utah where the rolls were equally or more inflated. A federal court in Missouri recently threw out the Department of Justice's complaint because the Department insisted on suing on only the (Democratic) Secretary of State, instead of those counties with actual deadwood problems, also noting that there was no evidence of voter fraud or evidence that any voter was denied the right to vote.

Finally, Mr. von Spakovsky never appeared to understand that his role as a Department of Justice attorney was to represent the "United States of America." Instead, on several occasions he took actions indicating a stubborn view that the Department represented the Bush Administration, the Republican Party or the Assistant Attorney General. For example in the Georgia v. Ashcroft litigation, Mr. von Spakovsky took a leading role in the case on remand. In that case, he proposed that the United States sign a joint co-counsel agreement with the defendant-intervenors - who were represented by top lawyers for the Georgia Republican Party -- which would have been an unprecedented and inappropriate political action. At a court hearing in the case he insisted on sitting at counsel with the Voting Section's attorneys but refused to file a notice of appearance for the United States, bizarrely claiming that he represented the Assistant Attorney General. Such a gross misunderstanding of the proper role of a Department of Justice attorney typifies his shortcomings

We have served the Department through Democratic and Republican administrations, consistently seeking to protect minority voters regardless of the impact of these actions on the political parties. While the priorities of the front offices in these administrations change based on the results of the elections, never before has professionalism given way to partisanship. We may have disagreed with our front office colleagues, but those disagreements were given a forum and, between professionals, we found resolution. Mr. von Spakovsky and others in this front office violated the sacred rule that partisanship should be checked at the door of the Justice Department so the business of protecting the American people through federal law enforcement can be honored without prejudice. We urge you to explore Mr. von Spakovsky's role in this unfortunate endeavor and refuse to reward him for this dubious stewardship.

Sincerely,

Joseph D. Rich
Chief, Voting Section, 1999-2005
Civil Rights Division Attorney, 1968-2005

Robert A. Kengle
Deputy Chief, Voting Section, 1999-2005
Voting Section Attorney, 1984-2005

Jon Greenbaum
Senior Trial Attorney, Voting Section, 1997-2003

David J. Becker
Senior Trial Attorney, Voting Section, 1998-2005

Bruce Adelson
Senior Trial Attorney, Voting Section, 2000-2005

Toby Moore
Political Geographer, Voting Section, 2000-2006

June 18, 2007

The Honorable Dianne Feinstein
The Honorable Bob Bennett
Senate Committee on Rules and Administration
SR-305 Russell Senate Office Building
Washington, DC 20510

Dear Chairperson Feinstein and Ranking Member Bennett:

We are writing as a follow up to our letter of June 11 in opposition to Mr. Hans von Spakovsky's nomination to the Federal Election Commission (FEC). We have reviewed his testimony to the Committee on June 13 and write to address some concerns we have over these statements.

Specifically, the following areas of testimony conflict with our recollection of events at the Voting Section in the Department of Justice's Civil Rights Division:

1. Mr. von Spakovsky attempted to paint a picture of his role in the Civil Rights Division's front office as one of a simple "middle manager," merely providing legal advice and recommendations to his superiors and then delivering the decisions made by his superiors to Voting Section staff.

   This characterization differs significantly from our experience with Mr. von Spakovsky. From the time he assumed the role of Counsel to the Assistant Attorney General in early 2003 until he left in December 2005, Mr. von Spakovsky spent virtually all of his time on voting matters and assumed the role of de facto Voting Section chief replacing the career Section Chief in most of his statutory responsibilities and traditional duties managing the Section. Mr. von Spakovsky assumed a position on the EAC Advisory Board that was reserved explicitly by Section 214(a)(13) of the Help America Vote Act (HAVA) for "the chief of the voting section . . . or the chief's designee" even though the Section chief had never designated Mr. von Spakovsky for this position; assigned staff to cases; took over lead review in a major case; rewrote performance evaluations of career staff; and set Section priorities. During our combined tenure at the Voting Section, we have never seen a political appointee exercise this level of control over the day to day operations of the Voting Section. Indeed, testimony previously given by Bradley Scholzman, Mr. von Spakovsky's supervisor, to the Senate Judiciary Committee reinforces

the degree to which front office oversight of the Section was delegated to Mr. von Spakovsky.

Moreover, as discussed in our June 11 letter, he consistently used this position to promote partisan political interests through narrow interpretations of HAVA, refocusing the Department's National Voter Registration Act (NVRA) enforcement activities, refusing to allow investigations under the Voting Rights Act based on discrimination in African-American and Native American communities, and redirecting limited resources to a partisan search for unsubstantiated allegations of voter fraud.

2. Mr. von Spakovsky conceded that he wrote an April 15, 2005 letter to Arizona, which opined that the state did not need to provide provisional ballots to voters who did not present identification when voting. This was a reversal of the Division's previous interpretation, and in direct conflict with the letter and spirit of HAVA. In fact, five months later Mr. von Spakovsky admitted drafting another letter reversing this position after a disagreement with the Election Assistance Commission that led one of the EAC's commissioners to protest that Mr. von Spakovsky was unnecessarily pressuring him to change his position on the issue.

In addition, contrary to his testimony, Mr. von Spakovsky did not seek information or input from career staff when he wrote the April 15, 2005 letter. After the April 15 letter was received by Arizona, an Arizona government official contacted Voting Section career staff seeking more information about the Department's new position on provisional balloting. Neither the attorney who fielded the call nor the Section chief had ever seen nor heard of the letter. The Section chief sent an email to other staff attorneys about the letter and none had seen nor heard of it. The Section chief called then-Assistant Attorney General Alex Acosta for an explanation of why and under what process the policy of the Section on provisional ballots had changed. Mr. Acosta indicated to the Section chief that he had never seen this letter.

According to the letter's signature, the policy was approved by former Principal Deputy Assistant Attorney General Sheldon Bradshaw. Curiously, however, Mr. Bradshaw left the Division approximately five days before the letter was sent.

3. Mr. von Spakovsky testified that he received approval from appropriate Department officials before he published *Securing the Integrity of American Elections: The Need for Change*, 9 Tex. Rev. Law & Pol. 277. The article, which advocated on behalf of restrictive

voter identification provisions, was published at about the same time that Mr. von Spakovsky began his active role in the Section's consideration of a similarly restrictive measure in Georgia.

Despite Mr. von Spakovsky's implication that publication of the article was pursuant to Department of Justice policy, our experience over decades and multiple administrations was decidedly different. Traditional practice when officials at the Department write scholarly articles is for those articles to be signed by the author and to include a disclaimer that the views in the article do not necessarily reflect the views of the Department.

It is clear from his explicit views in the article that his mind was made up about identification provisions and how they relate to voting, yet neither he nor his superiors (whom he testified were aware of the publication of the article), took steps to recuse him from consideration of the proposed Georgia law. Moreover, the views expressed in the article were consistent with his unwillingness to consider evidence that weighed against preclearance in the Georgia submission.

The role of the Department in reviewing voting laws submitted to the Attorney General under Section 5 of the Voting Rights Act is the same as the District Court of the District of Columbia when a jurisdiction decides to file a Section 5 declaratory judgment action. See 42 U.S.C. § 1973c. Indeed, a decision to preclear cannot be reviewed by a court. Participating in the preclearance process while serving as a vigorous advocate for provisions like this across the country created an insurmountable conflict of interest.

4. We are also concerned with Mr. von Spakovsky's characterization of the shifting enforcement priority established under the voter purge program he directed in 2005 During our tenure, Mr. von Spakovsky rejected requests from several voting rights advocacy groups to enforce that part of the National Voter Registration Act (NVRA) which requires social service agencies to provide voter registration opportunities, despite the fact that there is substantial evidence that registration at social service agencies has plummeted during this administration. This type of activity expands the right to vote, especially for minorities and the disabled, and yet Mr. von Spakovsky placed no resources into this area and no cases were filed. Instead, Mr. von Spakovsky shifted the Voting Section's NVRA enforcement priorities to enforcement of the voter purge provisions of the law. This was problematic as the pressure on states to purge their voter rolls came at the same time as state election officials were implementing new, often unprecedented statewide voter registration databases. Moreover, in at least two instances (Washington and

Missouri), the positions he pushed encouraging voter purges were rejected by federal district courts.

5. Mr. von Spakovsky testified he had very little memory of the 2004 incident involving a directive of the Minnesota Secretary of State regarding voter identification for Native American voters who do not live on reservations. It is likely that the directive would have disenfranchised thousands of Native American voters had a federal court not found it discriminatory.

Mr. von Spakovsky testified that he failed to recollect this particular matter because it was one of a deluge of requests that flooded the Voting Section in the run up to the election. This matter, however, received unique treatment from Mr. von Spakovsky and his colleagues in the front office. On no other occasion was the Section Chief told that a matter was especially "sensitive" nor that each step of an investigation had to be approved by Mr. von Spakovsky or by Mr. Schlozman.

Furthermore, Mr. von Spakovsky testified that he thought it made sense to restrict the Section's contact on the matter to the Secretary of State rather than the Hennepin or Ramsey County Boards of Elections who registered the complaint with the U.S. Attorney's office. According to his testimony, Mr. von Spakovsky restricted the contact out of an interest in expediency, because the Secretary of State issued the directive. However, at the time, Mr. von Spakovsky communicated to the Section chief that it would be better to call the Secretary of State to avoid a leak. It is important to note that interviewing Hennepin and/or Ramsey county election officials was necessary to find what they had actually been told by the Secretary of State.

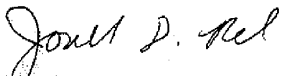
6. Mr. von Spakovsky defended his enforcement record by alluding to two Section 2 cases that had been approved internally but were never filed in court because of a subsequent change in circumstances. It is inconsistent that Mr. von Spakovsky discussed internal decision-making when testifying about these cases while at the same time asserting that nebulous claims of privilege prevented him from answering the Committee's questions concerning his recommendations in the Georgia and Texas matters. More importantly, he did not mention the several matters in which Voting Section staff recommended lawsuits be brought on behalf of African-American and other minority voters (each with a strong evidentiary record requiring action) that the front office either refused to approve, or on which they unnecessarily delayed action for as long as a year and a half. Nor did he mention an important policy change

concerning approval of Section 2 investigations. Until Mr. von Spakovsky came to the front office, the Section chief had authority to approve such investigations, but at about the same time as his arrival in the front office in 2003, the policy was changed, requiring Mr. von Spakovsky's approval for all such investigations. This led to far fewer investigations and occasions when requests to merely begin an investigation into a matter were rejected.

Finally, we want to respond to a suggestion made during the hearing that the signatories of the June 11 letter had their own partisan interests in mind in writing to the Committee and advocating for the defeat of Mr. von Spakovsky's nomination. As we have mentioned before, we served proudly through Republican administrations and Democratic administrations. We welcome discussion about ideas and relish intelligent debate about principles, but as civil servants we committed ourselves to enforcing federal civil rights laws without fear or favor. We were required to be apolitical while protecting a political process. We relished that challenge. Our decisions sometimes disappointed Democrats and sometimes disappointed Republicans, but always honored our belief that it is the *voters* who are protected by the statutes the Section enforces, not the political parties. We oppose Mr. von Spakovsky's nomination because he made it impossible for us to carry out that essential mission in our service at the Voting Section.

We appreciate the Committee's commitment to uncovering the role that Mr. von Spakovsky played in the changing priorities and policies within the Voting Section and in the politicization of the Civil Rights Division. We are committed to preserving the legacy, potential and commitment of the career civil servants who have dedicated their lives to protecting our nation's Civil Rights. Unfortunately, the changes that Mr. von Spakovsky oversaw at the Department threaten that tradition. We look forward to your continued investigation into his role in initiating that change.

Sincerely,



Joseph D. Rich
Chief, Voting Section, 1999-2005
Civil Rights Division Attorney, 1968-2005

Robert A. Kengle
Deputy Chief, Voting Section, 1999-2005
Voting Section Attorney, 1984-2005

Stephen B. Pershing
Senior Trial Attorney, Voting Section 1996-2005

Jon Greenbaum
Senior Trial Attorney, Voting Section, 1997-2003

David J. Becker
Senior Trial Attorney, Voting Section, 1998-2005

Bruce Adelson
Senior Trial Attorney, Voting Section, 2000-2005

Toby Moore
Political Geographer, Voting Section, 2000-2006

FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 29, 2007

The Honorable Dianne Feinstein
Chairman
Committee on Rules and Administration
United States Senate
Washington, D.C. 20510-0504

The Honorable Robert F. Bennett
Ranking Minority Member
Committee on Rules and Administration
United States Senate
Washington, D.C. 20510-4403

Dear Chairman Feinstein and Senator Bennett:

At the end of my nomination hearing, I was asked to provide a rebuttal to claims made in a letter sent to the Rules Committee dated June 11, 2007 ("the Letter"). The Authors of the Letter ("the Authors") sent a subsequent letter to the Rules Committee on June 18. I wish to note for the Committee that pursuant to Rule 1.6 of the Model Rules of Professional Conduct[1] and applicable rules of the states in which I am licensed to practice law, I am not able to reveal information regarding the contents of the legal advice I provided while employed at the Department of Justice due to attorney-client privilege. To the extent that the information requested has been revealed by the Department publicly or in response to Congressional oversight and inquiries, or otherwise waived, I will certainly provide that information.

With regard to the specific matters referenced in the Letter:

Hiring Practices and Personnel Matters

I did not make final decisions on who was hired in the Civil Rights Division or the Voting Section. Like other career employees, I was occasionally asked to interview candidates along with the Deputy Assistant Attorney General and/or the Section Chief. I provided my recommendations and observations on the candidate to the Deputy. Politics was not a part of the hiring process, no political litmus test existed, and no questions about any applicant's own political views were asked in any interview in which I participated.

[1] Model Rule 1.6, Confidentiality of Information (2007 version), is available on the American Bar Association's website, at http://www.abanet.org/cpr/mrpc/rule_1_6.html.

My own observation of the Deputies and the Assistant Attorney Generals for whom I worked is that they were interested in only one thing – hiring the best and brightest attorneys with demonstrated legal skills and abilities. Attorneys from a wide variety of educational backgrounds and professional experiences were always considered.

I refer the Committee to the written responses provided to the Senate Judiciary Committee by Assistant Attorney General Wan Kim, the last Assistant Attorney General for whom I worked before leaving the Division, following his oversight hearing on November 16, 2006. Mr. Kim stated that he was not aware of a change in the hiring process for lateral attorneys and that Section chiefs play a central role in the hiring of attorneys through both the Honors Program and lateral hiring process, including active participation in interviewing both lateral and Honors Program applicants. Mr. Kim added that he takes "very seriously the recommendations of Section Chiefs in all personnel matters."

The Letter alleges that a large number of employees have left the Voting Section. Since I am no longer employed at the Division, I do not have access to personnel information. However, in the previously referenced responses, Assistant Attorney General Kim stated that the "average Division attorney attrition rate from FY 2001 through FY 2005 was between 12 and 13 percent." The attrition rate during the previous Administration was virtually the same. Assistant Attorney General Kim added that "In FY 2005, the attrition rate was approximately 17 percent (16.6 percent for career attorneys), with 63 attorneys, 59 of whom were career attorneys, leaving the division that year." However, this rise in the attrition rate was apparently due to a special early retirement package that was offered to selected components within the Department of Justice by OPM, including the Civil Rights Division. A number of employees in the Division took advantage of this special program, including I believe, both Mr. Rich and Mr. Kengle. The Letter also states that a large number of attorneys have left the Voting Section since 2005. I have no information about that since I also left the Division in the first week of 2006.

The Letter discusses the alleged involuntary transfer of the Deputy Chief of the Voting Section. Although not identified by name, I assume the Authors are referring to Robert Berman. As I have stated, I had no hiring or firing authority within the Division, and no authority to transfer any employees. As I recall, Mr. Berman received approval from the Assistant Attorney General for his request to enter a special Department of Justice training program for the Senior Executive Service. Mr. Berman then requested a detail to the Administrative Office of the U.S. Courts in September of 2005 as part of the qualification process for the SES. He was still on that detail when I left the Department of Justice and started at the Federal Election Commission. I have no knowledge regarding his subsequent transfer when he returned to the Voting Section or the reasons for that transfer since it occurred after I left the Division.

The Letter also falsely states that I engaged in "retribution" against certain employees. That is simply untrue, particularly since I had no authority to transfer or terminate the employment of any employee. The Authors complain that performance evaluations were changed to supposedly "retaliate" against employees for disagreeing with the legal conclusions of the Front Office. That is categorically untrue and there is no evidence that any information included in any evaluation was false. The standard form used to evaluate attorney performance requires approval by both a rating official and a

reviewing official. In the Civil Rights Division, the rating official is typically the Section Chief who supervises the line attorneys. The reviewing official is usually one of the Deputy Assistant Attorney General's to whom the Section reports. I was tasked with looking at the evaluations forwarded by the Section Chief for review by the Deputy Assistant Attorney General and providing the Deputy Assistant Attorney General with my advice and opinion as to whether evaluations accurately reflected the performance of the employees that I had observed.

I reviewed evaluations for accuracy in rating the performance of the employee. For example, if an employee had written a legal memorandum that recited the wrong holding of an applicable legal case, or failed to discuss relevant case law, I might recommend that information be included in the performance evaluation. The vast majority of performance evaluations were ultimately approved with no changes; a small number that failed to include certain legal errors that had been made by the employee were brought to the attention of the Deputy Assistant Attorney General and the Chief of the Section. The Deputy Assistant Attorney General made the final decision on the content of the performance evaluation after discussions with the Section Chief. Under the rules governing career employees, they have the ability to appeal any part of their performance evaluations with which they disagree. I am unaware of any such appeals that were successful. I advised both the Section Chief and the Deputy Assistant Attorney General of instances in which material information regarding the legal performance of employees was not included in a performance evaluation. There was absolutely nothing improper in doing so – it was my job.

With regard to the issue of complaints filed with the Office of Professional Responsibility ("OPR"), I would respectfully refer the Committee to the letter of June 11, 2007, sent to the Senate Judiciary Committee by the Department of Justice that I understand provides information about these matters.

Redistricting and Section 5 Preclearance

1. Georgia's Voter Identification Statute

I answered extensively questions about the Division's review under Section 5 of a voter identification law submitted by the Georgia Attorney General during my nomination hearing. I would simply add that the Principal Deputy Assistant Attorney General as the Acting Assistant Attorney General approved the recommendation made by the Chief of the Voting Section to preclear this statute without objection.[2] I provided the Principal Deputy with my legal advice and recommendations on this case. Contrary to the Authors' claims, I was not required to recuse myself and I acted entirely in an ethical and professional manner when I was at the Division and published a law review article, in full compliance with 5 C.F.R. 2635.703(a) and 2635.807(b). In my article, I recommended very generally that voter identification requirements be adopted to improve the integrity of elections from a public policy standpoint. Most of the lawyers I worked with at the Division also had opinions on how certain laws could be improved or changed, and these opinions in no way

[2] Information about the recommendation of the Voting Section Chief that would normally be privileged has been previously provided to Congress by the Department of Justice.

interfered with their ability to enforce the requirements of the law. I have written extensively on public policy issues related to voting and elections. Writing on such issues does not pose a conflict of interest under any applicable rule of professional conduct and did not interfere with my ability to objectively review the application of Section 5 to a specific statute.

As a legal matter, the Authors are simply incorrect with respect to what constitutes a conflict of interest requiring recusal or disqualification. To borrow from a parallel situation, a judge is not required to recuse himself from a case simply because he has expressed views on the subject at issue. In fact, the Sixth Circuit specifically held that a judge was not required to recuse himself in an eminent domain case simply because he had previously written a law review article on the general subject. *See Goodpasture v. Tennessee Valley Authority*, 434 F.2d 760, 765 (6th Cir. 1970) ("We hold that District Judge William E. Miller did not err in failing to recuse himself because of a law review article written by him entitled 'Federal and State Condemnation Proceedings – Procedure and Statutory Background.'"). *See also Laird v. Tatum*, 409 U.S. 824, 831 (1972) (memorandum of Justice Rehnquist) ("My impression is that none of the former Justices of this Court since 1911 have followed a practice of disqualifying themselves in cases involving points of law with respect to which they had expressed an opinion or formulated policy prior to ascending to the bench."); *Rosquist v. Soo Line R.R.*, 692 F.2d 1107 (7th Cir. 1982) ("Judge Grady had, in the past, written and spoken on the subject of contingent fees. He was not required, however, to recuse himself merely because he holds and had expressed certain views on that general subject."); *U.S. v. Crowell*, 586 F.2d 1020, 1027 (4th Cir. 1978) ("The fact that the district judge had researched the problems in advance and was able to make an immediate ruling does not establish prejudgment."); *Lawton v. Tarr*, 327 F.Supp. 670, 673 (E.D.N.C. 1971) ("I do not believe that my strong aversion to the Vietnam War and my belief that it is the most tragic national mistake made in my lifetime will have the slightest effect or influence upon my judgment as to the time of termination of exposure under the selective service law. It is hornbook law that attitude or feeling a judge may entertain toward the subject matter of a case does not disqualify him.").

I would also note that Mr. Greenbaum, one of the Authors, was working for the Lawyers Committee for Civil Rights at the time this statute was being reviewed by the Division, and his organization participated in bringing suit against the State of Georgia over the statute. Mr. Greenbaum's name is on the Complaint that was filed in federal court in Georgia against the statute claiming that it violated various Constitutional provisions as well as the Voting Right Act.[3]

The Authors assert that the Division must have erred in approving this law because the "federal court in Georgia found that this law violated the poll tax provision of the Constitution." Even if a law violated the poll tax provision of the Constitution, that would have been completely irrelevant for Section 5 preclearance purposes. Under applicable Supreme Court precedent, the Division was not permitted in 2005 to consider constitutional violations (or violations of *other* provisions of the Voting Rights Act) when reviewing for preclearance a change in voting laws under Section 5 of the VRA. *See Reno v. Bossier Parish School Board,* 520 U.S. 471 (1997). In fact, the Department of Justice published a Notice on January 18, 2001, providing guidance to the public on the retrogression standard

[3] *See* http://moritzlaw.osu.edu/electionlaw/litigation/documents/CorrectCompleteComplaint.pdf at p. 45.

under Section 5. *See Guidance Concerning Redistricting and Retrogression Under Section 5 of the Voting Rights Act*, 66 Fed.Reg. 5412. This Guidance specifically explained that under the *Bossier Parish* decision, "[r]edistricting plans that are not retrogressive in purpose or effect *must be precleared, even if they violate other provisions of the Voting Rights Act or the Constitution*." (emphasis added). The individual listed in the Guidance for anyone seeking further information was Joseph D. Rich, one of the Authors.

In *Bossier Parish*, the Supreme Court specifically stated that the Justice Department may only consider the retrogression standard of Section 5. Not only was the Department forbidden from considering possible constitutional violations when conducting a Section 5 review, it could not even consider possible violations of other provisions of the VRA, such as Section 2. In a second decision, *Reno v. Bossier Parish School Board*, 528 U.S. 320 (2000), the Supreme Court held that Section 5 requires preclearance of a redistricting plan enacted with a discriminatory but nonretrogressive purpose. The court in the Georgia identification case, *Common Cause/Georgia v. Billups*, 406 F.Supp.2d 1326 (N.D. Ga. 2005), entered its preliminary injunction based solely on the 14th and 24th Amendments of the U.S. Constitution. The court specifically refused to grant an injunction under Section 2 of the VRA because the plaintiffs failed to demonstrate "a substantial likelihood of succeeding on the merits," *i.e.*, it found an insufficient basis in the claim of racial discrimination. *Id.* at 1375. The court's finding on the constitutional issues which did not involve racial discrimination were completely irrelevant and unrelated to the Division's review and could not lawfully have served as the basis for a Department denial of preclearance under Section 5. To the extent that the Authors' suggest otherwise, they would appear to be taking the position that the Department should have disregarded the Supreme Court's decisions.

The Division's Section 5 analysis was based on the information received in the submission from Georgia's Attorney General, including four sets of data received from the state on driver's licenses. As the Assistant Attorney General of the Office of Legislative Affairs, William Moschella, explained in a letter to Senator Christopher Bond dated October 7, 2005, the data received by the Division showed the following:

- Almost 6.5 million Georgians possessed identification from the Department of Motor Vehicles ("DMV") acceptable under the state statute– more than the Census total projected voting age population of Georgia when ineligible individuals such as noncitizens and prisoners are subtracted.
- Thus, there were 2 million more issued state DMV identification cards then there were registered voters.
- The racial composition of the DMV data indicated that 28% were African American, a percentage slightly higher than the African-American percentage of the voting age population in Georgia.
- Information from the state university system, which issues identification cards to all students that are acceptable under the law, showed that the number of African-American students enrolled and thus possessing acceptable identification was slightly higher than the percentage of African-American students in the voting age population.
- Census data showed that about 14.3% of whites and 19.4% of African-American Georgians worked for governments at the local, state or federal level; therefore, a

higher percentage of African-Americans than whites would have access to acceptable government-issued employee identification cards.

- Individuals who were unable to afford an identification card could receive one without paying a fee and the state had a mobile licensing program traveling to counties without licensing offices.
- No identification card was needed to vote by absentee ballot.

Mr. Moschella's letter also cites other factors that were taken into account by the Division in making its decision. Applying the applicable retrogression standard under Section 5, as interpreted by the Supreme Court, the Section Chief concluded that the State of Georgia had met its burden and that no objection was warranted.

The facts and the applicable law make it clear that the Division's decision was entirely reasonable and well within the standards that applied to Section 5 reviews. The Georgia district court's issuance of a preliminary injunction based on the plaintiffs' ultimate likelihood of success on certain constitutional violations are not relevant to a Section 5 analysis under applicable Supreme Court precedent.[4] While Congress subsequently rejected certain aspects of the Supreme Court's Section 5 jurisprudence in 2006 when it renewed Section 5, the Division cannot be faulted for adhering to the law as it existed at the time.

2. Texas Redistricting Submission

I must point out as a general matter on the issue of redistricting, before discussing specifically the Texas redistricting submission, that while I was at the Division, the Voting Section reviewed literally hundreds of city, county, state and congressional redistricting plans drawn by both Republican and Democratic legislators and officials. Of course, hundreds of plans drawn by Democratic officials were precleared by the Division while I was there, without any objection by the Front Office. The Authors claim "partisanship" and "politics" played a role in the "unprecedented mid-decade" Texas redistricting submission and all other matters handled by the Division. If that is the case, however, why do the Authors not complain that the Division engaged in supposed "partisanship" in every other redistricting plan it reviewed? Obviously, the supposed "mishandling" of the many redistricting plans submitted to the Division could have dramatically affected elections throughout the states covered under Section 5 of the Voting Rights Act. When considering only congressional redistricting plans, for example, the Division approved plans without objection drawn by Democratic legislatures in States such as Alabama, Georgia, Louisiana, and North Carolina. In my experience, the Assistant Attorney Generals for whom I worked and the Front Office of the Division applied the applicable law and precedent without regard to politics, partisanship or which political party might benefit from a particular redistricting plan.

---

[4] Notably, other Federal courts have disagreed with the Georgia court when confronted with the question of the constitutionality of voter identification requirements. The Seventh Circuit Court of Appeals found no violation of any federal law or constitutional provisions when it reviewed a very similar photo identification law enacted in the State of Indiana. *See Crawford v. Marion County Election Board*, 472 F.3d 949 (7th Cir. 2007) *petition for rehearing en banc denied* 484 F.3d 436; *see also Purcell v. Gonzalez*, 549 U.S. _____(2006) (Supreme Court vacated preliminary injunction issued by 9th Circuit against Arizona voter identification law).

I replied extensively at the hearing to questions raised over the Division's review of the Texas redistricting plan under Section 5. The final decision on this matter was made by the Principal Deputy Assistant Attorney General because Assistant Attorney General Acosta had recused himself from the matter. The Authors cite the subsequent Supreme Court decision as somehow indicative that the Division erred in preclearing the plan, implying that the real reason was political. That is simply not the case.

I provided my legal advice and recommendations to the senior leadership of the Division when the Chief of the Voting Section sent his memorandum on the Texas redistricting submission to the Front Office. The advice followed a very deliberate and careful review of every relevant fact, along with the governing legal standards under Section 5 of the Voting Rights Act. The preliminary internal legal memorandum that was leaked to the press did not reflect the Division's final analysis of the redistricting plan. The leaked memorandum contained several incorrect assessments. Most significantly, it asserted that Texas had eleven majority-minority congressional districts. As the subsequent courts decisions make perfectly clear, Texas had only eight majority-minority districts. This error was the basis for the staff recommendation to object to the redistricting plan.

Subsequent events, including two decisions by a three-judge panel finding no violation of the Voting Rights Act, the 2004 elections held under the new plan that resulted in the election of an additional African American legislator, Al Green, in the 9th District, and the Supreme Court's decision, prove that the Division's conclusion to preclear the redistricting plan was correct and the earlier recommendations made by staff attorneys in the leaked memorandum were flawed.

As noted above, the applicable standard under Section 5 was whether there would be retrogression (or backsliding) in the position of racial minorities in their effective exercise of the electoral franchise when compared to the existing or benchmark plan. *See Beer v. United States*, 425 U.S. 130 (1976); *Reno v. Bossier Parish School Board*, 520 U.S. 471 (1997) (The timing of the redistricting –even if it was an "unprecedented mid-decade redistricting plan" – is completely irrelevant to a Section 5 preclearance determination.) "Retrogression, by definition, requires a comparison of a jurisdiction's new voting plan with its existing plan." *Reno*, 520 U.S. at 478. The benchmark redistricting plan in Texas at the time the new plan was submitted for review to the Division was the plan that had been drawn by a three-judge federal panel in 2001 in *Balderas v. Texas*, Case No. 6:01-158, 2001 WL 35673968 (E.D. Tex. Nov. 14, 2001) (*per curiam*) *summarily aff'd*, 536 U.S. 9191 (2002). The three-judge panel in *Balderas* found that eight of the 32 congressional districts allocated to Texas were minority districts protected by the Voting Rights Act – six districts for Hispanic voters and two districts for African American voters. The congressional districting plan submitted by Texas to the Division in 2003, preserved, without question, eight minority districts - the sole requirement under Section 5. In fact, as the election of Congressman Al Green (TX-9) demonstrates, Texas actually created a third district in which African American voters could elect their candidate of choice. Far from being retrogressive, the plan that DOJ precleared was actually progressive under Section 5 with respect to minority voting rights.

After preclearance was granted, a group of plaintiffs filed suit under Section 2 of the Voting Rights Act alleging, *inter alia*, that Texas had not created enough minority

districts, *i.e.*, that eight districts were not enough districts given demographics and other factors present in the state.[5] Of course, Section 2 and Section 5 have different requirements and standards, and while Section 5 only requires preservation of the status quo, Section 2 involves a complex analysis under three factors set forth in *Thornburg v. Gingles*, 478 U.S. 30 (1986), as well as the "totality of circumstances," that in layman's terms prohibits not retrogression but dilution of minority voting strength.

However, even the plaintiffs' Section 2 claim that there were more than eight majority-minority districts in Texas was denied by a three-judge panel in 2004. *Session v. Perry*, 298 F.Supp.2d 451 (E.D.Tex. 2004). The court's denial of the claim under Section 2 lends support to the Division's decision under Section 5 to preclear the plan as non-retrogressive. Under established Supreme Court precedent, to obtain preclearance under the retrogression standard of Section 5, Texas was required to preserve the number of existing minority districts in the benchmark plan. As the court's Section 2 ruling confirmed, there were only eight protected minority districts in Texas. A second decision was issued by the same court in 2005 following remand from the Supreme Court, holding that there was no valid constitutional claim with respect to this redistricting plan. *Henderson v. Perry*, 399 F.Supp.2d 756 (E.D. Tex. 2005).

In 2006, the Supreme Court issued a 5-4 decision featuring opinions written by Chief Justice Roberts and Justices Kennedy, Stevens, Souter, Breyer and Scalia, holding that only one of the redistricting plan's newly formed Hispanic district was an insufficient substitute for another Hispanic district, and therefore violated Section 2 (not Section 5). That one district excepted, the rest of the redistricting plan was upheld. *See League of United Latin American Citizens (LULAC) v. Perry*, 126 S.Ct. 2594 (2006).

The Supreme Court's decision also lends support to the Division's Section 5 preclearance determination since it upheld the view that there were a total of eight protected minority districts in Texas, not eleven as was mistakenly asserted by staff attorneys in the leaked memorandum. In just one example of the mistakes made in the memorandum, it was claimed that there were four protected African-American districts in the benchmark plan, not two as had been determined in 2001 in the *Balderas* decision. The memorandum asserted that in addition to the two districts represented by African-American Congresswomen Sheila Jackson Lee and Bernice Johnson, districts 24 and 25, represented by Anglo Democrats Martin Frost and Chris Bell, were also protected minority districts because – supposedly – African-Americans in those districts were able to elect their candidates of choice (the key test for determining whether a district is a protected minority district).

The Supreme Court's Section 2 analysis considered whether Congressman Frost's district was a minority district and rejected that claim, affirming the lower court's decision that it was not a minority district. *See LULAC v. Perry*, 126 S.Ct. at 2624-2625 (citing testimony of Congresswoman Eddie Bernice Johnson that District 24 was drawn for an

[5] The three-judge panel that first heard the lawsuit filed in response to Texas' 2003 redistricting plan described plaintiff's challenge as follows: "Plaintiffs allege that Plan 1374C is invalid because (1) Texas may not redistrict mid-decade; (2) the Plan unconstitutionally discriminates on the basis of race; (3) the Plan is an unconstitutional partisan gerrymander; and (4) various districts in Plan 1374C dilute the voting strength of minorities in violation of §2 of the Voting Rights Act." *See Session v. Perry*, 298 F.Supp.2d 451, 457 (E.D.Tex. 2004).

Anglo Democrat (Martin Frost, in particular) in 1991 by *splitting* a minority community and testimony of State Representative Ron Wilson that African-Americans did not have the ability to elect their preferred candidate, particularly an African-American candidate, in District 24). The leaked memorandum also asserts that district 25, represented by Chris Bell, was a protected minority district, which was simply untenable under the facts and the law. Bell had been elected in an open seat race in 2002 in which his African-American Democratic opponent who lost had received the majority of the African-American vote – Bell was thus obviously not the "candidate of choice" of African-American voters. Yet the memorandum mistakenly claimed that this was a protected minority district in which African-American voters could elect their candidate of choice. The staff's "unanimous recommendation" was rejected not because of politics but because it was demonstrably wrong.

The Supreme Court did find that a new Hispanic District, number 25 under the new plan, was not a proper substitute for a Hispanic district established in the benchmark plan and represented by Henry Bonilla. The Court did not determine, however, that Texas must have seven Hispanic districts under Section 2 – as was claimed by the plaintiffs and in the leaked memorandum. Instead, the new district was considered not compact enough to substitute for the changes made in Congressman Bonilla's district. The view of the Division that there were six Hispanic districts in the benchmark plan that must be preserved in the new redistricting plan in order for Section 5 preclearance to be granted, was correct.

Help America Vote Act

1. Guidance Letters

The Authors' allegation that I "violated" decades-long traditions and policies against issuing advisory opinions by sending a series of letters to state officials on the requirements of the new Help America Vote Act ("HAVA") is incorrect. President Bush signed HAVA into law on October 29, 2002. Title III of HAVA contained a series of new requirements for states in the areas of provisional balloting, computerized voter registration lists, voter identification requirements, and others. All of the states and territories covered by these new federal requirements needed to pass implementing legislation and regulations if their state laws did not match the new requirements of HAVA. The Division began receiving telephone calls, emails, and letters from state and local election officials and legislators all over the country making inquiries about this new federal law and what its provisions required. Unfortunately, the new Election Assistance Commission ("the EAC") created by the statute was not yet in existence and did not start its operations until almost a year and a half later, and was not empowered by Congress to issue regulations, provide legal opinions, or enforce the statute.

The Division's leadership was very concerned with ensuring that the states implemented the new requirements of the law as soon as possible and apparently felt that objective would be handicapped if no one in the federal government in Washington could answer the numerous questions that state and local officials had regarding implementation. The Division attempted to provide guidance to state and local officials on the requirements of the law based on how the Division intended to enforce it. To that end, the Division established a web page devoted to explaining HAVA's requirements that provided answers

to some of the most commonly asked questions, and where the Division could post its responses to specific inquiries.[6] Contrary to the assertions made in the Letter, these were not "advisory opinions," as the letters themselves are careful to state. For example, one of these letters reads:

> The Attorney General has assigned to the Civil Rights Division the Department's enforcement responsibilities under Section 401 of HAVA. Although the Department states its formal positions with respect to statutes it enforces only through case-by-case litigation, the Department does on occasion offer its general views on the manner in which it intends to enforce a particular statue or set of laws. Therefore, while we cannot issue a formal advisory opinion, we will attempt to answer the questions posed in your letter to the extent we can based on our responsibilities to enforce Title III of HAVA, which imposes uniform and nondiscriminatory election technology and administration requirements on the 55 States and Territories..

See Letter of May 20, 2003 to Ann McGeehan, from ***Joseph D. Rich****, Chief, Voting Section*, available at http://www.usdoj.gov/crt/voting/hava/tx_ltr.pdf.[7]

On January 18, 2001, the Voting Section published a document for the States and local jurisdictions covered by Section 5 that stated "it is *appropriate* to issue guidance concerning the review of redistricting plans submitted to the Attorney General for preclearance pursuant to Section 5 of the Voting Rights Act." 66 Fed. Reg. 5412 (emphasis added).[8] Another example of guidance provided by the Division was the "ADA Checklist for Polling Places," released on February 20, 2004, which was intended to improve accessibility at polling places for disabled voters and available at http://www.usdoj.gov/crt/ada/votingck.htm.

The Authors' assertions that there was something wrong with the Division trying to provide guidance to the States on how to implement these new federal requirements is simply wrong. A review of the guidance letters on the Voting Section's webpage makes it clear that there is nothing improper about them, and that they are, in fact, rather unexceptional. The letters represent an attempt by the Division to carry out the intent of Congress in passing HAVA by helping the states come into compliance with a new federal statute that changed the way local jurisdictions administered federal elections. I think the Assistant Attorney General correctly decided to provide such guidance which not only helped states implement the law, but avoided forcing the Division having to file *more* enforcement actions under HAVA. The decision preserved Division resources. This was part of a comprehensive attempt to educate state and local officials on the requirements of HAVA that also included numerous presentations at meetings of election official

---

[6] *See* http://www.usdoj.gov/crt/voting/hava/hava.html and http://www.usdoj.gov/crt/voting/misc/faq.htm#faq22.

[7] Additional letters signed by Mr. Rich include *Letter of August 24, 2004 to Donald H. Dwyer, Jr., from Joseph D. Rich, Chief, Voting Section available at* http://www.usdoj.gov/crt/voting/hava/MD_ltr2.pdf and *Letter of February 11, 2004 to William F. Galvin, from Joseph D. Rich, Chief, Voting Section available at* http://www.usdoj.gov/crt/voting/hava/MA_ltr.pdf.

[8] Mr. Rich was Chief of the Voting Section when this guidance was issued. Another example of such information provided by the Division is "Guidance Regarding the Use of Race by Federal Law Enforcement Agencies," issued in June 2003 and available on the Division's web site.

organizations, such as the National Association of Secretaries of State, the National Association of State Election Directors, the National Association of County Officials, the Election Center, and state election official associations.

The letters attempt to explain the requirements of different provisions of Title III and are signed by various officials at the Division, including Mr. Rich and me. The vast majority of these letters were produced after consultation and discussion by the lawyers assigned to enforcement of HAVA on what was the legally correct response.

Two letters in particular have attracted attention. As I informed the Committee at my hearing, I drafted two letters sent to Arizona on provisional balloting requirements at the direction of my supervisors. As I recall, I may not have consulted with the Section prior to drafting the first letter. I believe, however, that I did consult with the Section on the second letter and incorporated suggested edits. (The second letter is available at http://www.azsos.gov/Releases/2005/pressrelease10/DOJ_Opinion_on_PROP200.pdf.) Mr. Rich has erroneously claimed that Sheldon Bradshaw, the Principal Deputy Assistant Attorney General, could not have signed the letter of April 15, 2005, because he was no longer at the Division at the time. That is categorically untrue. Mr. Bradshaw can easily confirm that he was still at the Division on April 15 and that he both authorized and signed the letter in question.

The Authors raise in their letter a specific and similar guidance letter that I signed on September 8, 2003, in response to an inquiry from the Attorney General of Maryland. The Authors claim this letter "advocated for a policy keeping eligible citizens off the voter rolls for typos and other mistakes by election officials." That claim is completely false. The letter speaks for itself and is available on the Voting Section's web page at http://www.usdoj.gov/crt/voting/hava/maryland_ltr.pdf. The letter carefully cites the applicable provisions of both the National Voter Registration Act and HAVA. First of all, it explains that under the NVRA, covered States must "ensure that any eligible applicant is registered to vote in an election" if the "valid voter registration form of the applicant" is submitted, accepted, received or postmarked, as the case may be, within 30 days before the federal election in question. Second, it cites to the new provisions in HAVA that require state election officials and state motor vehicle officials "to match information in the database of the statewide voter registration system with information in the database of the motor vehicle authority to the extent required to enable each such official to **verify the accuracy of the information** provided on applications for voter registration." Section 303(a)(5)(B)(i) (emphasis added). Section 303(a)(5)(B)(ii) of HAVA also provides that state motor vehicle officials and the federal commissioner of Social Security shall "enter into an agreement…for the purpose of verifying applicable information" provided by voter registration applicants.

The September 8 letter makes it very clear that HAVA requires states to undertake the verification process outlined by Congress, but that the statute "leaves the ultimate decision of whether to register the applicant, including the decision of whether the information provided by the voter has been sufficiently verified, up to the State or local election official charged with that responsibility under State law." Nowhere in the letter do I state that States should refuse to register applicants because of "typos and mistakes by election officials."

2. The U.S. Election Assistance Commission

I am accused of "usurping" the role of Mr. Rich on the Board of Advisors of the U.S. Election Assistance Commission and failing to "consult" with him over EAC matters. Section 214 of HAVA provides that the Department of Justice has two representatives on the Board of Advisors, the Chief of the Office of Public Integrity and the Chief of the Voting Section or their "designees." 42 U.S.C. § 15344. The Assistant Attorney General of the Division made the decision that I would serve as the designated representative on behalf of the Voting Section and sent a letter to the EAC notifying the Commission of that decision.

As outlined in Section 202 of HAVA, Congress intended the EAC to help improve the administration of federal elections. 42 U.S.C. § 15322. The Board of Advisors was tasked in Section 212 with providing its best advice and recommendations to the EAC in preparing voluntary voting system guidelines, voluntary guidance under Title III of HAVA, and best practices recommendations for election administration. Unlike Mr. Rich, I have real-world experience in election administration and considerable knowledge of voting system guidelines. I served as a member of two separate committees developing standards for voting equipment and electronic data interchange in the election area: the Voting Standards Committee of the Institute of Electrical and Electronics Engineers (IEEE) and the Election and Voter Service Technical Committee of the Organization for the Advancement of Structured Information Standards (OASIS). Due to my experience, the Assistant Attorney General apparently believed I was better suited to serve on the Board of Advisors.

The Authors also criticize certain email communications between me, the EAC Commissioners and the leadership of the Board of Advisors. There was nothing inappropriate about that correspondence. First, there is nothing unusual or untoward about discussions occurring between two federal agencies with overlapping jurisdiction over a federal statute, particularly when the two agencies may have differing views on the statute's requirements. In fact, under such circumstances, one would hope that the agencies would consult with one another to reach consensus so the public and the regulated community are not faced with differing interpretations of the same statute. That is what in fact occurred on more than one occasion. Second, I was a member of the Board of Advisors that is *supposed* to give advice to the EAC Commissioners. I sent such advice and recommendations to the Commissioners and the Board on a number of issues – there was nothing inappropriate about that, either.

3. *Amicus* Briefs

The Authors accuse me of personally violating "established Department policy" by supposedly involving the Division in "contentious and partisan litigation" and for allegedly "draft[ing] legal briefs in lawsuits between the Republican and Democratic parties…all in favor of the Republican party's position." Though the Authors do not provide details, these accusations apparently refer to litigation filed in 2004 by private plaintiffs under HAVA over the new statute's provisional balloting requirements.

Amicus briefs are prepared by the Appellate Section and then reviewed by the senior leadership of the Division for final approval. No brief can be filed without the

Assistant Attorney General's authorization. A simple review of the briefs reveals the names of the attorneys at the Division who prepared and approved these briefs on behalf of the Department of Justice – they included Assistant Attorney General R. Alexander Acosta and the head of the Appellate Section, David K. Flynn, along with the lawyers in the Section who drafted the briefs, David White and Chris Wang. My name appears nowhere in the briefs, although I reviewed drafts prepared by Mr. Flynn and his Appellate Section lawyers, as did other lawyers in the Front Office of the Division. Decisions regarding the contents of these briefs, and whether to file them, were made by the Assistant Attorney General and the Principal Deputy Assistant Attorney General. This is entirely consistent with the law, regulations, and the usual and customary practices of the Division. The Authors vastly overstate my influence.

The cases in which these *amicus* briefs were filed in Florida, Michigan, and Ohio (including the Sixth Circuit) were the first major cases under HAVA. Each raised significant issues about the availability of a private right of action and the Section 302 requirement that states provide provisional ballots to certain voters. 42 U.S.C. §15482. The briefs at issue are available on the HAVA web page of the Voting Section at the Division's website at http://www.usdoj.gov/crt/voting/hava/hava.html.

Section 401 of HAVA gives the Attorney General authority to enforce the statute, so it should come as no surprise that the Assistant Attorney General believed it was important to provide the courts with the Department's views on the issues raised in the lawsuits. In fact, the Division files *amicus* briefs in a wide variety of cases that affect voting rights. The gravaman of the Authors' complaint is really that they disagree with the Division's position that HAVA did not permit a private right of action with respect to the statute's provisional balloting section. Once again, their criticism is policy-driven and they characterize these differences in policy as malfeasance. The briefs speak for themselves and in my opinion present a reasoned argument based on the text and structure of the statute, as well as its legislative history. In these briefs, the Department noted that other voting rights statutes, namely the Voting Rights Act and the National Voter Registration Act, clearly recognize a private right of action, while HAVA does not. This issue was even debated by members of Congress and Senator Dodd, one of HAVA's main sponsors, indicated that HAVA was not privately enforceable. Senator Dodd stated:

> While I would have preferred that we extend [a] private right of action…, the House simply would not entertain such an enforcement provision. Nor would they accept federal judicial review of any adverse decision by a State administrative body.

148 Cong. Rec. S10488-02, S10512 (Oct. 16, 2002).

The Sixth Circuit ultimately disagreed with the Department's position and held that although "HAVA does not create a private right of action," HAVA does create a right to cast a provisional ballot under certain circumstances that is enforceable against state officials under 42 U.S.C. § 1983.[9] While the Authors' preferred policy position may have prevailed on this issue, they are absolutely incorrect that the Division came to its position as a result of political considerations or that that position was unreasonable.

---

[9] *See Sandusky Co. Democratic Party v. Blackwell*, 387 F.3d 565,572-573 (6th Cir. 2004).

With respect to the second issue raised in these cases, provisional ballots, the Authors fail to inform the Rules Committee that in each of these three cases, the Division's position prevailed. The Florida federal district court and the Sixth Circuit (which decided both the Ohio and Michigan cases) agreed with the Division's position on provisional balloting. *See Florida Democratic Party v. Hood*, 342 F.Supp.2d 1073 (N.D. Fla.2004); *Sandusky County Democratic Party v. Blackwell*, 386 F.3d815 (6th Cir. 2004) and 387 F.3d 565 (6th Cir. 2004).

The issue in each of these cases was whether Section 302 of HAVA requires states to count the provisional ballots of individuals who voted outside of their assigned precincts. The Division's *amicus* briefs addressed only the very narrow federal question – they did not address whether or not precinct-based voting is appropriate in any particular state. The Division's briefs argued that HAVA requires a state to provide a provisional ballot to an individual who does not appear on the registration list at a polling place, but believes he or she is registered and eligible to vote there. However, Congress did not prohibit a state from declining to count that ballot if the voter is not, in fact, eligible to vote at that polling place. The Sixth Circuit rejected the arguments advanced by the plaintiffs, and held that Congress did not intend to override traditional precinct-based voting by the states when it passed HAVA and that HAVA does not require a state to count a provisional ballot "if it is cast outside the precinct in which the voter resides." Thus, every final court of record in each of these cases agreed with the Division's position on provisional ballots.

4. ***Spencer v. Blackwell***

The Authors also fault me for drafting a letter in another Ohio case, *Spencer v. Blackwell.* This letter was authorized and signed by the Assistant Attorney General and is available on the Voting Section's HAVA web page at http://www.usdoj.gov/crt/voting/hava/spencer.pdf and speaks for itself. It brought to the federal court's attention the new provisional balloting requirements set forth in HAVA and noted that if voters were challenged in the November 2 election pursuant to state law, "as a matter of federal law those challenged voters must be given the opportunity to cast a provisional ballot even if they are unable to answer the specific questions posed by election judges." *See Letter of October 29, 2004, from R. Alexander Acosta to Judge Susan J. Dlott.* The Authors claim that the Division's letter was somehow improper because "the law did not implicate any statue that the Department enforces." The state challenge law at issue, the Division noted, implicated HAVA's provisional balloting requirements. There was absolutely nothing improper about the Assistant Attorney General's decision to provide information to the judge in this case on the Division's views about a new federal statute. The Sixth Circuit found against the plaintiffs in their request for injunctive relief. *Spencer v. Blackwell*, 388 F.3d 547 (6th Cir. 2004).

National Voter Registration Act

The Authors accuse me of "chang[ing] the enforcement direction of the Department regarding the National Voter Registration Act." This complaint amounts to nothing more than the fact that the Division enforced Section 8 of the NVRA. Among its other requirements, Section 8 requires states to "conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible

voters by reason of (A) the death of the registrant; or (B) a change in the residence of the registrant." 42 U.S.C. § 1973gg(a)(4). Section 8 is an important part of the nation's voter rights laws, and the low esteem in which the Authors hold it is perplexing.

First, the Authors vastly overstate my authority. The enforcement priorities of each Section at the Division, including the Voting Section, are determined by the Assistant Attorney General, not a career Counsel. I certainly made recommendations to the senior leadership on what those priorities should be – that was part of my job - but I had no final decision making authority.

Second, under the current Administration, the Division has an outstanding NVRA enforcement record. The prior Administration did not file a single lawsuit to enforce the NVRA during the period 1997 to 2000. The first new lawsuits to enforce the statute were filed in 2001 against the State of Tennessee and the City of St. Louis, Missouri. Suit was filed against Tennessee over the state's failure to implement voter registration opportunities in state public assistance and driver's licenses offices. Suit was filed against St. Louis because of the city's failure to follow the specific notice provisions of Section 8 of the NVRA before removing voters from the registration list.

The Division also filed NVRA suits against New York for failing to offer voter registration to disabled students at public colleges and universities and against Pulaski County, Arkansas for violating a number of provisions of Section 8. The Division additionally settled two other NVRA problems out of court that involved jurisdictions not properly registering new voters.

The Authors complain specifically about a lawsuit filed against Missouri for the state's failure to properly maintain voter registration lists as required under Section 8, as well as improperly removing voters by failing to follow the required notice provisions.[10] This enforcement action was the result of an investigation conducted by career lawyers within the Voting Section (as described in the complaint) that showed that the Secretary of State and certain Missouri counties were not complying with the law. The suit had absolutely nothing to do with politics or partisanship or the fact that the Missouri Secretary of State is a Democrat – in fact, the Division filed an almost identical suit under the NVRA for the same failure to properly maintain the voter registration list against the Indiana Secretary of State, who happened to be a Republican.[11] The Authors criticize the filing of the Missouri suit because a federal judge dismissed the case, holding that DOJ needs to sue the individual counties at fault. However, it is my understanding that the dismissal is being appealed by the Division.

In the identical Indiana NVRA suit, the Secretary of State agreed to remedy the violation and entered into a Consent Decree that was approved by a federal judge. *See*

---

[10] The complaint is available at http://www.usdoj.gov/crt/voting/nvra/mo_nvra_comp.htm. Paragraph 13 of the complaint states, in part, that there are local election jurisdictions that "have not always followed the notice and timing requirements of Section 8 of the NVRA with respect to voters who may have moved. These practices have resulted in the removal of voters from voter registration lists in elections for federal office prematurely in a manner not consistent with federal law."

[11] *See* http://www.usdoj.gov/crt/voting/nvra/in_nvra_comp.htm. The Indiana case was filed in 2006 when I was no longer at the Division, although the investigation that led to the suit was authorized by the Acting Assistant Attorney General while I was still at the Division.

http://www.usdoj.gov/crt/voting/nvra/in_nvra_cd.pdf. The same is true of the NVRA lawsuit in New Jersey mentioned by the Authors – the defendants entered into a Consent Decree approved by a federal court.[12]

The Authors criticize these three NVRA lawsuits, two of which were settled with the explicit approval of federal judges and one of which is on appeal. They fail to acknowledge that these three lawsuits were *not* the only NVRA lawsuits brought by the Division. Their disagreement is nothing more than a public policy dispute. They would have ordered the Division's enforcement priorities differently than did the leadership of the Division and the Department of Justice. The Division could not willfully ignore the list maintenance requirements of the NVRA, requirements that were reinforced by Congress in Section 303 of HAVA. List maintenance is required in both the NVRA and HAVA and it is the responsibility of DOJ to enforce those laws.

Georgia v. Ashcroft

Finally, the Authors claim that I failed to understand "that [my] role as a Department of Justice attorney was to represent the 'United States of America.' Instead, on several occasions [I] took actions indicating a stubborn view that the Department represented the Bush Administration, the Republican Party or the Assistant Attorney General." I agree that a DOJ lawyer represents the United States, and I also believe that the Executive Branch should be run by the appointees of the President of the United States.

The President's appointees are vested with decision-making authority. During my time at the Department of Justice, I represented the United States, but I also represented the Bush Administration – which appointed my superiors, including the Assistant Attorney General to whom I reported. Every federal employee in the Executive Branch represents *both* his country and whichever Administration happens to occupy the White House. (The suggestion that I neglected my duties as a Department employee to instead serve as a Republican Party operative while I worked at the Division is insulting.) I do not believe that any "career professional" (myself included) has the right to disobey, or otherwise disregard, a politically-appointed superior simply because he disagrees with that superior's policy choices and believes that he "represents the United States."

The final allegation the Authors bring to the Committee's attention is that I "took a leading role" in the *Georgia v. Ashcroft* case and somehow violated the Federal Rules of Civil Procedure by attending an oral hearing held in this case when it was on remand before the district court. One of my duties as a career Counsel in the Front Office of the Division was monitoring all litigation in which the Voting Section was involved and reporting developments to my supervisors, including the Deputy Assistant Attorney General and the Assistant Attorney General. I did not take an active role in the litigation itself, such as taking depositions, interviewing witnesses, signing pleadings, or presenting oral arguments to the judges, as the trial attorneys assigned to the case were, although I certainly reviewed the work done in the case. I was under no obligation to file a Notice of Appearance under the applicable federal rules and I certainly was not required to do so

[12] *United States v. State of New Jersey*, Civil No. 06-4889 (D. N.J. October 12, 2006). This lawsuit was filed over violations of Section 8 of the NVRA as well Section 303(a) of HAVA.

simply because I attended an oral hearing (as did other Voting Section career lawyers whose names were not on the pleadings filed with the court). I made no presentations of any kind to the judges in the matter and did not in any other way put in an appearance in the case.

Conclusion

I have been a lawyer for over two decades. I have always practiced law in a professional and completely ethical manner, and that includes the four years I worked at the Department of Justice. Partisanship and politics played no part in the decisions I made or the legal advice and recommendations that I gave to my supervisors at the Civil Rights Division, including all three of the Assistant Attorney Generals for whom I worked. I applied the law and prior precedent as I understood it to every case I was presented. I believe the facts and the subsequent court decisions show that the decisions the Division made while I worked there were reasonable, easily defensible, and legally correct, contrary to the claims made by the Authors.

The FEC can only function well when its commissioners engage in bipartisan consensus building to issue regulations, conduct audits, and enforce the law when conducting investigations of violations. The record that the four nominees have established over the past 18 months while they have served on the Commission demonstrates our ability to work together to enforce the Federal Election Campaign Act.

Enforcement

In enforcement matters, for example, we have cast 1,094 votes. Votes on enforcement matters are a true test of the ability of Commissioners to work together on a nonpartisan basis, because these are votes that determine whether or not the Commissioners believe that a political candidate or political party or political committee have violated the law based on the investigation conducted by the FEC's Office of General Counsel. In 2006, the percentage of split votes was only 0.9%, and in 2007, it was only 0.2% through June 5. This is a remarkable achievement that shows that the Commissioners of both parties are intent on enforcing the law without regard to partisan advantage.

Advisory Opinions

The current Commission has voted on 42 Advisory Opinions. *See* Attachment A. Twenty-three of these opinions were adopted unanimously. Nine were adopted with only one dissenting vote. In three cases, the Commission split and was unable to approve a response to the requestor. Of the 39 cases in which the Commission issued an Opinion, I have cast only five dissenting votes. The record shows that every current Commissioner has dissented more than once during this period. There is a healthy diversity of opinion among the Commissioners which is invaluable when considering the issues that come before us. Overall, I think this record demonstrates a remarkable ability on the part of each Commissioner to work with his colleagues to reach agreement on difficult issues.

Regulations

Since I was appointed to this position, the Commission has adopted seven (7) new Final Rules, and I voted as part of a bipartisan majority in each of those instances. The Commission also voted twice to retain existing rules. I dissented in one of those matters because I believed the Commission should undertake a rulemaking to produce *additional* regulations to provide guidance to the regulated community on the subject of when a 527 organization becomes a federally regulated "political committee."[13] The Commission's rulemakings are detailed at Attachment B.

I am proud of my record at the Commission because it shows in concrete terms that I work together with my fellow Commissioners every day to achieve our common goals and objectives. This record also refutes any suggestion that I am unable or unwilling to enforce the law as it is written. I thank the Committee for this opportunity to respond to the criticisms that have been leveled against me.

Sincerely yours,

Hans A. von Spakovsky

[13] My statement on this matter has previously been provided to the Committee and is available at http://www.fec.gov/members/von_Spakovsky/speeches/statement20060531.pdf.

Attachment A

ADVISORY OPINIONS

Date	*AO Number*	*AO Requestor*	*Vote*	*Dissenter(s)*
1/19/2006	2005-20	Pillsbury Winthrop Shaw Pitman	6-0	
3/9/2006	2006-01	PAC For A Change (Boxer)	6-0	
3/9/2006	2006-02	Robert Titley	5-1	Toner
3/9/2006	2006-06	Francine Busby for Congress	4-2	Toner, Mason
3/23/2006	2006-03	Whirlpool Corp. PAC	6-0	
3/29/2006	2006-04	Tancredo for Congress Committee	4-2	Toner, von Spakovsky
4/20/2006	2006-07	J.D. Hayworth for Congress	4-1	Weintraub
4/20/2006	2006-09	American Institute for Certified Public Accountants PAC	3-2	*AO not adopted.*
4/20/2006	2006-11	Washington Democratic State Central Committee	4-1	Lenhard
4/20/2006	2006-12	International Association of Machinists & Aerospace Workers	5-0	
5/4/2006	2006-08	Matthew Brooks	4-2	Weintraub, Walther
5/4/2006	2006-13	Dennis Spivak	6-0	
5/9/2006	2006-16	Nancy Detert	6-0	
5/18/2006	2006-15	TransCanada Corp.	5-1	Walther
6/5/2006	2006-19	Los Angeles County Democratic Party Central Committee	5-1	Walther
6/22/2006	2006-14	National Restaurant Association PAC	3-2	*AO not adopted.*
6/22/2006	2006-17	Berkeley Electric Cooperative Inc.	5-0	
6/22/2006	2006-18	Kay Granger Campaign Fund	4-1	Lenhard
6/30/2006	2006-10	EchoStar Satellite LLC	5-1	Toner
8/29/2006	2006-21	Cantwell 2006	6-0	
8/29/2006	2006-26	Texans for Henry Bonilla	6-0	
9/6/2006	2006-25	Jon Kyl for US Senate	6-0	
9/14/2006	2006-22	Wallace for Congress	6-0	
10/4/2006	2006-20	Unity '08	5-1	von Spakovsky
10/4/2006	2006-24	National Republican Senatorial Committee	4-2	Toner, von Spakovsky
10/13/2006	2006-31	Bob Casey for Pennsylvania Committee	3-3	*AO not adopted.*
11/2/2004	2006-29	Rep. Mary Bono	6-0	
11/9/2006	2006-30	ActBlue	4-2	Mason, Weintraub

Attachment A

Date	*AO Number*	*AO Requestor*	*Vote*	*Dissenter(s)*
11/21/2006	2006-32	Progress for America	4-2	Toner, von Spakovsky
12/21/2006	2006-33	National Association of Realtors PAC	4-2	Weintraub, Walther
1/25/2007	2006-35	Kolbe for Congress	4-0	
1/25/2007	2006-37	Kissin for Congress	4-0	
2/8/2007	2006-34	Working Assets, Inc.	6-0	
2/8/2007	2006-36	Green Senatorial Campaign Committee	6-0	
2/8/2007	2006-38	Sen. Casey State Committee	6-0	
3/1/2007	2007-03	Obama Exploratory Committee	5-0	
3/8/2007	2007-02	Arizona Libertarian Party	5-0	
3/22/2007	2007-01	Sen. Claire McCaskill	5-0	
4/19/2007	2007-04	Atlatl, Inc.	4-1	von Spakovsky
5/3/2007	2007-05	Erik Iverson	4-0	
5/3/2007	2007-06	Libertarian Party of Indiana	5-0	
5/31/2007	2007-07	Craig for US Congress	5-0	

Attachment B

Rulemaking Votes

1. Revised Explanation and Justification for Definitions of "Agent" for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures (11 CFR 109.3 and 300.2(b)), 71 Fed. Reg. 4,975 (Jan. 31, 2006).
   - Final vote, 4-2, taken January 23, 2006. Commissioners Lenhard, Mason, Toner and von Spakovsky voted affirmatively for the decision. Commissioners Walther and Weintraub dissented.

2. Final Rules and Explanation and Justification on the Definition of Federal Election Activity (11 CFR 100.24), 71 Fed. Reg. 8,926 (Feb. 22, 2006).
   - Final vote, 6-0, taken February 9, 2006. Commissioners Lenhard, Mason, Toner, von Spakovsky, Walther, and Weintraub voted affirmatively for the decision.

3. Interim Final Rule on the Definition of Federal Election Activity (Modifying the Definition of "In Connection with an Election in which a Candidate for Federal Office Appears on the Ballot" (11 CFR 100.24(a)(1)(iii)), 71 Fed. Reg. 14,357 (Mar. 22, 2006).
   - Final vote, 4-2, taken February 9, 2006. Commissioners Mason, Toner, von Spakovsky, and Walther voted affirmatively for the decision. Commissioners Lenhard and Weintraub dissented.
   - Final Explanation and Justification adopted on March 16, 2006. Commissioners Mason, Toner, von Spakovsky, and Walther voted affirmatively for the decision. Commissioners Lenhard and Weintraub dissented.

4. Final Rules on the Definitions of "Solicit" and "Direct" (11 CFR 300.2(m) and (n)), 71 Fed. Reg. 13,926 (Mar. 20, 2006).
   - Final vote, 4-2, taken March 13, 2006. Commissioners Mason, von Spakovsky, Toner, and Walther voted affirmatively for the decision. Commissioners Lenhard and Weintraub dissented.

5. Final Rules and Explanation and Justification on Internet Communications, 71 Fed. Reg. 18,589 (April 12, 2006).
   - Final vote, 6-0, taken March 27, 2006. Commissioners Lenhard, Mason, Toner, von Spakovsky, Walther, and Weintraub voted affirmatively for the decision.

6. Final Rules on Coordinated Communications, 71 Fed. Reg. 33,190 (June 8, 2006).
   - Final vote, 6-0, taken April 7, 2006. Commissioners Lenhard, Mason, Toner, von Spakovsky, Walther, and Weintraub voted affirmatively for the decision.

- Final Explanation and Justification adopted, 6-0, on June 2, 2006. Commissioners Lenhard, Mason, Toner, von Spakovsky, Walther, and Weintraub voted affirmatively for the decision.

7. Final Rules on Increase in Limitation on Authorized Committees Supporting Other Authorized Committees, 71 Fed. Reg. 54,899 (Sept. 20, 2006).

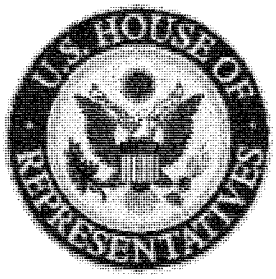
- Final vote, 6-0, taken September 14, 2006. Commissioners Lenhard, Mason, Toner, von Spakovsky, Walther, and Weintraub voted affirmatively for the decision.

8. Supplemental Explanation and Justification on Political Committee Status, 72 Fed. Reg. 5,595 (Feb. 7, 2007).

- Final vote, 4-2, taken January 31, 2007. Commissioners Lenhard, Mason, Walther, and Weintraub voted affirmatively for the decision. Commissioners Toner and von Spakovsky dissented.

9. Finals Rules on Best Efforts in Administrative Fines Challenges, 72 Fed. Reg. 14,662 (March 29, 2007).

- Final vote, 5-0, taken on March 22, 2007. Commissioners Lenhard, Mason, von Spakovsky, Walther, and Weintraub voted affirmatively for the decision.



Preserving Democracy: What Went Wrong in Ohio

Status Report of the
House Judiciary Committee Democratic Staff

January 5, 2005

Table of Contents

Executive Summary 4

Chronology of Events 7

Relevant Background Law 13
- A. Federal Constitutional Law Safeguards 13
- B. Federal Statutory Election Safeguards 15
- C. Ohio Election Safeguards 16
  - 1. The Right to Vote in Ohio 17
  - 2. Declaring Results 18
  - 3. Security of Ballots and Machinery 18
  - 4. The Law of Recounts and Contests 20
- D. Determination of Ohio's Electoral College Votes 21

Detailed Findings 23
- A. Pre-Election 24
  - 1. Machine Allocations – *Why were there such long lines in Democratic leaning areas but not Republican leaning areas?* 24
  - 2. Cutting Back on the Right to Provisional Ballots 31
  - 3. Cutting Back on the Right of Citizens to Register to Vote 36
  - 4. Targeting New Minority Voter Registrants – *Caging* 40
  - 5. Targeting Minority and Urban Voters for Legal Challenges 43
  - 6. Denying Absentee Voters Who Never Got Their Ballots the Right to a Provisional Ballot 47
  - 7. Denying Access to the News Media 48
- B. Election Day 49
  - 1. County-Specific Issues 49
  - 2. Myriad Other Problems and Irregularities 63
    - a. Intimidation and Misinformation 63
    - b. Machine Irregularities 65
    - c. Registration Irregularities and Official Misconduct and Errors . . 67
  - 3. General Problems 70
    - a. Spoiled Ballots – *Hanging Chads Again?* 70
    - b. Exit Polls Bolster Claims of Irregularities and Fraud 72
- C. Post-Election 78
  - 1. Confusion in Counting Provisional Ballots 78
  - 2. Justice Delayed is Justice Denied – *Recounts were Delayed Because of a Late Declaration of Results* 79
  - 3. Triad GSI – *Using a "Cheat Sheet" to Cheat the Voters in Hocking and Other Counties* 81
  - 4. Greene County – *Long Waits, the Unlocked Lockdown and Discarded Ballots* 87

5. Other Recount Irregularities 91
a. Irregularities in Selecting the Initial 3% Hand Count 92
b. Irregularities in Applying the Full Hand-Count Requirement . . . 94
c. Irregularities in the Treatment of Ballots 94
d. Irregularities in the Treatment of Witnesses at the Recount and their Access to Ballots 95

Recommendations 97
A. Electoral College Challenge 97
B. Need for Further Congressional Hearings 100
C. Legislation 101

Executive Summary

Representative John Conyers, Jr., the Ranking Democrat on the House Judiciary Committee, asked the Democratic staff to conduct an investigation into irregularities reported in the Ohio presidential election and to prepare a Status Report concerning the same prior to the Joint Meeting of Congress scheduled for January 6, 2005, to receive and consider the votes of the electoral college for president. The following Report includes a brief chronology of the events; summarizes the relevant background law; provides detailed findings (including factual findings and legal analysis); and describes various recommendations for acting on this Report going forward.

We have found numerous, serious election irregularities in the Ohio presidential election, which resulted in a significant disenfranchisement of voters. Cumulatively, these irregularities, which affected hundreds of thousand of votes and voters in Ohio, raise grave doubts regarding whether it can be said the Ohio electors selected on December 13, 2004, were chosen in a manner that conforms to Ohio law, let alone federal requirements and constitutional standards.

This report, therefore, makes three recommendations: (1) consistent with the requirements of the United States Constitution concerning the counting of electoral votes by Congress and Federal law implementing these requirements, there are ample grounds for challenging the electors from the State of Ohio; (2) Congress should engage in further hearings into the widespread irregularities reported in Ohio; we believe the problems are serious enough to warrant the appointment of a joint select Committee of the House and Senate to investigate and report back to the Members; and (3) Congress needs to enact election reform to restore our people's trust in our democracy. These changes should include putting in place more specific federal protections for federal elections, particularly in the areas of audit capability for electronic voting machines and casting and counting of provisional ballots, as well as other needed changes to federal and state election laws.

With regards to our factual finding, in brief, we find that there were massive and unprecedented voter irregularities and anomalies in Ohio. In many cases these irregularities were caused by intentional misconduct and illegal behavior, much of it involving Secretary of State J. Kenneth Blackwell, the co-chair of the Bush-Cheney campaign in Ohio.

First, in the run up to election day, the following actions by Mr. Blackwell, the Republican Party and election officials disenfranchised hundreds of thousands of Ohio citizens, predominantly minority and Democratic voters:

- **The misallocation of voting machines led to unprecedented long lines that disenfranchised scores, if not hundreds of thousands, of predominantly minority and Democratic voters**. This was illustrated by the fact that the *Washington Post* reported that in Franklin County, "27 of the 30 wards with the most machines per

registered voter showed majorities for Bush. At the other end of the spectrum, six of the seven wards with the fewest machines delivered large margins for Kerry."[1] Among other things, the conscious failure to provide sufficient voting machinery violates the Ohio Revised Code which requires the Boards of Elections to "provide adequate facilities at each polling place for conducting the election."

"True peace is not merely the absence of tension: it is the presence of justice."
-- Martin Luther King Jr.

- **Mr. Blackwell's decision to restrict provisional ballots resulted in the disenfranchisement of tens, if not hundreds, of thousands of voters, again predominantly minority and Democratic voters.** Mr. Blackwell's decision departed from past Ohio law on provisional ballots, and there is no evidence that a broader construction would have led to any significant disruption at the polling places, and did not do so in other states.

- **Mr. Blackwell's widely reviled decision to reject voter registration applications based on paper weight may have resulted in thousands of new voters not being registered in time for the 2004 election.**

- **The Ohio Republican Party's decision to engage in preelection "caging" tactics, selectively targeting 35,000 predominantly minority voters for intimidation had a negative impact on voter turnout.** The Third Circuit found these activities to be illegal and in direct violation of consent decrees barring the Republican Party from targeting minority voters for poll challenges.

- **The Ohio Republican Party's decision to utilize thousands of partisan challengers concentrated in minority and Democratic areas likely disenfranchised tens of thousands of legal voters, who were not only intimidated, but became discouraged by the long lines.** Shockingly, these disruptions were publicly predicted and acknowledged by Republican officials: Mark Weaver, a lawyer for the Ohio Republican Party, admitted the challenges "can't help but create chaos, longer lines and frustration."

- **Mr. Blackwell's decision to prevent voters who requested absentee ballots but did not receive them on a timely basis from being able to receive provisional ballots**

---

[1] *See* Powell and Slevin, *supra*.

likely disenfranchised thousands, if not tens of thousands, of voters, particularly seniors. A federal court found Mr. Blackwell's order to be illegal and in violation of HAVA.

Second, on election day, there were numerous unexplained anomalies and irregularities involving hundreds of thousands of votes that have yet to be accounted for:

- **There were widespread instances of intimidation and misinformation in violation of the Voting Rights Act, the Civil Rights Act of 1968, Equal Protection, Due Process and the Ohio right to vote.** Mr. Blackwell's apparent failure to institute a single investigation into these many serious allegations represents a violation of his statutory duty under Ohio law to investigate election irregularities.

- **We learned of improper purging and other registration errors by election officials that likely disenfranchised tens of thousands of voters statewide.** The Greater Cleveland Voter Registration Coalition projects that in Cuyahoga County alone over 10,000 Ohio citizens lost their right to vote as a result of official registration errors.

- **There were 93,000 spoiled ballots where no vote was cast for president, the vast majority of which have yet to be inspected.** The problem was particularly acute in two precincts in Montgomery County which had an undervote rate of over 25% each – accounting for nearly 6,000 voters who stood in line to vote, but purportedly declined to vote for president.

- **There were numerous, significant unexplained irregularities in other counties throughout the state:** (i) in Mahoning county at least 25 electronic machines transferred an unknown number of Kerry votes to the Bush column; (ii) Warren County locked out public observers from vote counting citing an FBI warning about a potential terrorist threat, yet the FBI states that it issued no such warning; (iii) the voting records of Perry county show significantly more votes than voters in some precincts, significantly less ballots than voters in other precincts, and voters casting more than one ballot; (iv) in Butler county a down ballot and underfunded Democratic State Supreme Court candidate implausibly received more votes than the best funded Democratic Presidential candidate in history; (v) in Cuyahoga county, poll worker error may have led to little known third-party candidates receiving twenty times more votes than such candidates had ever received in otherwise reliably Democratic leaning areas; (vi) in Miami county, voter turnout was an improbable and highly suspect 98.55 percent, and after 100 percent of the precincts were reported, an additional 19,000 extra votes were recorded for President Bush.

Third, in the post-election period we learned of numerous irregularities in tallying provisional ballots and conducting and completing the recount that disenfanchised thousands of voters and call the entire recount procedure into question (as of this date the recount is still not complete) :

- **Mr. Blackwell's failure to articulate clear and consistent standards for the counting of provisional ballots resulted in the loss of thousands of predominantly minority**

votes. In Cuyahoga County alone, the lack of guidance and the ultimate narrow and arbitrary review standards significantly contributed to the fact that 8,099 out of 24,472 provisional ballots were ruled invalid, the highest proportion in the state.

- ***Mr. Blackwell's failure to issue specific standards for the recount contributed to a lack of uniformity in violation of both the Due Process Clause and the Equal Protection Clauses.*** We found innumerable irregularities in the recount in violation of Ohio law, including (i) counties which did not randomly select the precinct samples; (ii) counties which did not conduct a full hand court after the 3% hand and machine counts did not match; (iii) counties which allowed for irregular marking of ballots and failed to secure and store ballots and machinery; and (iv) counties which prevented witnesses for candidates from observing the various aspects of the recount.

- **The voting computer company Triad has essentially admitted that it engaged in a course of behavior during the recount in numerous counties to provide "cheat sheets" to those counting the ballots.** The cheat sheets informed election officials how many votes they should find for each candidate, and how many over and under votes they should calculate to match the machine count. In that way, they could avoid doing a full county-wide hand recount mandated by state law.

Chronology of Events

The Lead Up to the 2004 Ohio Presidential Election In Ohio – In the days leading up to election day 2004, a consensus appeared to have emerged among observers that the state of Ohio would be one of the battleground states that would decide who would be elected the Forty-fourth President of the United States.[2] Both the Democratic and Republican Presidential campaigns, as well as outside groups, had spent considerable time and resources to win the state, but the day before the election, the Democratic candidate, Senator John Kerry, appeared to have the edge.[3] The Democratic Party also had vastly outperformed its Republican counterparts in registering voters in this key state.[4]

Election Day – Numerous irregularities were reported throughout Ohio. In particular, in predominately Democratic and African-American areas, the voting process was chaotic, taxing and ultimately fruitless for many. The repeated and suspicious challenges of voter eligibility and a lack of inadequate number of voting machines in these areas worked in concert to slow voting

---

[2]*See, e.g.* Susan Page, *Swing States Lean to Kerry: Democrat Ties Bush Nationally,* USA TODAY, Nov. 1, 2004; Anne E. Kornblut, *Big Push to the Finish: Bush, Kerry Make Last Stand in Crucial States*, BOSTON GLOBE, Nov. 1, 2004; Mike Allen and Lois Romano, *A Feverish Pitch in Final Hours*, WASH. POST, Oct. 31, 2004.

[3]*See* Page, *supra.*

[4]*See* Ford Fessenden, *A Big Increase Of New Voters in Swing States*, N.Y. TIMES, Sept. 26, 2004.

Democracy at Risk: The 2004 Election in Ohio

Section II
Executive Summary

Copyright 2005 DNC Services Corporation

DEMOCRACY AT RISK: THE 2004 ELECTION IN OHIO

EXECUTIVE SUMMARY

1. Background

In December 2004, the DNC announced a comprehensive investigative study and analysis of election administration issues arising from the conduct of the 2004 general election in Ohio. The DNC decided to undertake this study because of the many reports, made to the Democratic Party, appearing in the press and made to advocacy groups, immediately after the election, of problems in the administration of the election in that state—problems that prevented many Ohio citizens who showed up at the polls to be able to vote and to have their vote counted. Although significant problems were reported in several states, the DNC decided to concentrate on Ohio because it was a pivotal state in the election and was the focus of extensive litigation and questions relating to administration of the election, both before and after Election Day.

The purpose of this investigation was not to challenge or question the results of the election in any way. Rather, the purpose of this effort was to fulfill the Democratic Party's commitment to ensuring that every eligible voter can vote and that every vote is counted. This study, accordingly, was intended to address the legitimate questions and concerns that have been raised and to develop factual information that would be important and useful in crafting further necessary election reforms.

The investigation sought to address the following key questions, among others:

- Were the numbers of voting machines, official pollworkers and other resources adequate? If not, did the shortage, in effect, lead to people waiting much longer than they should have in order to vote? Were there differences in how long people had to wait based on race, income or other factors?

- The Help America Vote Act ("HAVA"), passed by Congress in the wake of the 2000 Florida election problems, requires that voters who show up at the polls and believe they are registered but aren't on the voter list be allowed to cast a "provisional ballot"—a special, paper ballot that is put aside, separate from other ballots, and considered later. Different states and counties had different rules about how and under what circumstances to count those ballots. It's much better to be able to cast a regular vote than a provisional ballot: In Ohio more than 20 percent of provisional ballots cast were not counted. The number of voters forced to cast provisional ballots in Ohio was very high compared with other states.

What accounted for that? Were there problems in the timely processing of registration applications, or with purges and/or with other issues in the development and maintenance of registered voter lists?

- Why were approximately one quarter of the provisional ballots cast found to be invalid? Were there more invalid provisional ballots in particular jurisdictions or among particular race or income groups? Why were so many people who thought they had registered in the correct precinct, ultimately found not to be on the registered voter list for that precinct?

- Were there anomalies in the reported voting results compared, for example, with exit polls or with a county's voting history that cannot be explained by factors other than machine malfunction, misreporting and/or mistabulation?

- Did the DRE (touchscreen) voting machines in use for the first time function properly? Were proper security, logic and accuracy testing and other procedures consistently followed?

2. Study Team and Methodology

To address these questions, the DNC assembled the following team:

Voting Experience in Ohio—Survey Research:

Diane Feldman, The Feldman Group

Cornell Belcher, brilliant corners Research and Strategies

Quantitative Analysis of Precinct Level Data:

Michael C. Herron, Ph.D., Associate Professor of Government, Dartmouth College; Former Research Fellow, Center for Basic Research in the Social Sciences, Harvard University; former Faculty Associate, Institute for Policy Research, Northwestern University

Walter Richard Mebane, Jr., Ph.D., Professor of Government, Cornell University; former Visiting Scholar Center for Basic Research in the Social Sciences, Harvard University and former Visiting Associate Professor, Dept. of Social and Decision Sciences, Carnegie Mellon University

Jasjeet Singh Sekhon, Ph.D., Associate Professor of Government, Harvard University

Voting Machine Technology:

Juan M. Jover, Ph.D., Chairman and Co-Founder of Phyten Technologies; former Partner, Silicon Design Experts; former Director of Business Planning, American Express

Dan S. Wallach, Ph.D., Associate Professor of Computer Science and Electrical and Computer Engineering, Rice University

Data Collection and Assembly:

Eric Greenwald, Esq., Deputy Voter Protection Director for Ohio, 2004, Democratic National Committee/Kerry-Edwards 2004

Julie Andreeff Jensen, Esq. Voter Protection Coordinator, Cuyahoga County, Ohio, 2004, Democratic National Committee/Kerry-Edwards 2004

Project Management:

Donna Brazile, Chair, DNC Voting Rights Institute

Lina Brunton, DNC Targeting Director

Vincent Fry, Executive Director, DNC Voting Rights Institute

Monica Marvin, Esq., Brazile & Associates, Project Coordinator

Joseph E. Sandler, Esq., DNC General Counsel

The study methodology consisted of several basic components, which are described in detail in the individual chapters of the report:

(1) A statewide random survey of Ohioans (conducted January 30 – February 2, 2005) who voted or went to the polls with the intention of voting in the 2004 general election; sample size: 1,201.

(2) Two surveys related to provisional ballot voters: a survey of 400 provisional ballot voters in Cuyahoga County (includes Cleveland and surrounding cities) and a survey of non-provisional voters in Cuyahoga County, each of whom was paired with a geographically similar person from the provisional ballot survey. In order to do this survey in the most thorough manner possible, it was necessary to do these two separate polls, which was costly and time-consuming. It was therefore necessary to limit the surveys to one county. Cuyahoga County was selected because a higher percentage of provisional ballots were NOT counted in that county compared to other counties.

(3) Comprehensive analysis of all available precinct data on voter registration, turnout, election results, absentee ballots cast, provisional ballots cast and counted, number of voting machines/booths in each precinct, and number of poll workers in each precinct.

(4) Analysis of above data by voting machine technology team.

(5) Comprehensive collection and analysis of available reports received by DNC Voter Protection teams in Ohio on Election Day.

3. Highlights of Findings

A. Substantial numbers of voters experienced problems in voting and these problems varied significantly by race, geography and type of voting machine and tabulation system that was used.

- Overall, 28 percent of Ohio voters reported problems with their voting experience, including ballot problems, locating their proper polling place and/or intimidation.

- Twice as many African American voters as white voters reported experiencing problems at the polls (52 percent vs. 25 percent).

- Touchscreen voting machines—also known as "direct recording equipment" or "DRE" machines—were used for the first time in a number of counties. Voters in counties using touchscreen voting machines reported experiencing far more problems than voters in other counties—56 percent vs. 28 percent statewide.

- This problem was particularly acute in Franklin County (which includes Columbus and surrounding areas) where 70 percent of voters reported problems with their voting experience. Franklin is one of the major urban counties in Ohio with a significant percentage of lower-income and minority voters.

- There was a vast disparity in the level of confidence in the election system among Ohio voters based on race: 71 percent of whites are very confident their vote was counted correctly versus 19 percent of African Americans.

- Overall, nearly one-quarter of all Ohio voters reported that their experience in 2004 has made them less confident about the reliability of elections in Ohio.

B. Scarcity of voting equipment caused long lines and deterred people from voting. These problems varied significantly by race and type of voting machine.

- Scarcity of voting machines caused long lines that deterred many people from voting. Three percent of voters who went to the polls left their polling places and did not return due to the long lines.

- Counties using DRE (touchscreen) voting machines witnessed longer waits, with more than half (52 percent) of voters in these counties waiting more than twenty minutes.

- Of the counties using DRE (touchscreen) voting machines, Franklin County (Columbus and surrounding cities) was the worst— 74 percent of voters waited more than twenty minutes to vote. There were also proportionally fewer voting machines in Franklin County's minority neighborhoods than in its predominantly white neighborhoods.

- Statewide, African American voters reported waiting an average of 52 minutes before voting while white voters reported waiting an average of 18 minutes.

- Overall, 20 percent of white Ohio voters reported waiting more than twenty minutes, while 44 percent of African American voters reported doing so.

C. Provisional ballots were vastly overused in Ohio and the types of voters forced to vote provisionally varied significantly by registration status, residential mobility and race. Anecdotal evidence suggests these problems were due to extremely faulty election administration.

- 158,642 provisional ballots were cast in Ohio, equaling 2.8 percent of all votes cast for President—compared with 0.9 percent for Pennsylvania and 0.3 percent for Florida. Indeed, only 27,742 provisional ballots were cast in Florida, which had 135 percent more votes cast for President than were cast in Ohio.

- New registrants were much more likely to be required to cast ballots provisionally: 26.5 percent of voters who first registered to vote in 2004 were required to cast a provisional ballot versus 2.5 percent of voters who registered before 2004.

- Residential mobility was also associated with the likelihood of casting a provisional ballot: Voters who had moved since the last time they voted were 6.7 times more likely to vote provisionally.

Voters who had lived at their current address for less than five years were seven times more likely to cast provisional ballots than those who have lived at their current address for more than five years.

- Persons who rent their homes were 2.1 times more likely to cast provisional ballots than homeowners.

- Again, in order to do a more intensive study, the DNC team did two surveys of voters in Cuyahoga County (Cleveland and surrounding areas)—a survey of those who cast provisional ballots in Cuyahoga County and a survey of non-provisional voters in Cuyahoga County. Of provisional voters in Cuyahoga County, 35 percent were African American, compared to 25 percent of non-provisional voters, matched by geography. African American voters were 1.2 times more likely than white voters to be required to vote provisionally.

- These racial differences hold even when related differences in mobility are accounted for: *African American voters who had voted in the past but had moved since the last time they voted were nearly twice as likely to be forced to vote provisionally than white voters who had voted in the past but had moved since the last time they voted.*

- Voters between the ages of 18 and 54 were far more likely to be forced to vote provisionally than voters over the age of 55, even when registration and residential mobility effects were taken into account.

- Overall, 78 percent of provisional ballots in Ohio were counted whereas only 66.2 percent of provisional ballots in Cuyahoga County were counted.

- Reports submitted to the DNC's Voter Protection Teams made it clear that many election officials and poll workers did not understand the provisional ballot rules and made many significant mistakes:

    1. in requiring voters to vote provisionally;
    2. in not offering ballots to voters when they should have been allowed to vote provisionally;
    3. in running out of provisional ballots; or
    4. in failing to handle ballots as legally required.

D. Identification requirements were illegally administered and the effects varied significantly by race and age.

- Under Ohio law, the only voters who should have been asked for identification were those voting in their first Federal election who had registered by mail but did **not** provide identification in their registration application. Although only 7 percent of all Ohio voters were newly registered (and only a small percentage of those voters registered by mail and failed to provide identification in their registration application), more than one third (37 percent) reported being asked to provide identification.—meaning large numbers of voters were illegally required to produce identification.

- For example, only 23 percent of provisional ballot voters in Cuyahoga County were in fact newly registered, but 71 percent were forced to provide identification.

- African American voters statewide were 47 percent more likely to be required to show identification than white voters. Indeed, 61 percent of African American men reported being asked to provide identification at the polls.

- Although statewide only 22 percent of voters under age 30 were in fact newly registered, 67 percent of these voters reported being required to provide identification.

- Overall, 36 percent of previously registered voters reported being required to provide identification.—a requirement that was both unnecessary and illegal.

E. There were significant problems in processing new registrations and these problems varied by race and county.

- Statewide, 2 percent of voters overall reported having their registration status challenged at the polls—but only 1 percent of white voters who were actually registered reported such problems versus 4 percent of African American voters who were actually registered.

- African American women and younger African Americans experienced the most registration problems.

- Ballot problems varied across counties, with Cuyahoga County (3 percent) experiencing the most trouble.

- Reports received by DNC Voter Protection Teams indicated that local boards of election were simply unprepared to process the dramatic surge in voter registration applications. This problem was compounded by contradictory and incoherent directives from the Ohio Secretary of State.

F. Many voters experienced intimidation and this experience varied significantly by race.

- 6 percent of all voters reported feelings of intimidation.
- Statewide, 16 percent of African Americans reported experiencing intimidation versus only 5 percent of white voters.
- Reports received by the DNC Voter Protection Teams included voters being told falsely that if they had outstanding parking tickets or car payments they would be arrested at the polls.

G Voters were less likely to have their votes counted in counties using punchcard machines and optical scan machines that were centrally tabulated.

- There is a difference in the residual vote rate (i.e., many ballots cast with few valid presidential votes counted) depending upon the type of machine used: optical scan voting machines that were tabulated at the precinct where the votes were cast (precinct-tabulated optical scan machines); optical scan voting machines that were tabulated at a central terminal (centrally tabulated optical scan machines); DRE (touchscreen) machines; or punchcard machines.
- The median residual vote rate in those precincts using precinct-tabulated optical scan machines is within a normal range—while that rate in punchcard precincts is more than twice as large, and is clearly unacceptable.
- Unexpectedly high residual vote rates also occurred in centrally tabulated optical scan precincts.
- In DRE (touchscreen) and precinct-tabulated optical scan precincts, the higher number of machines per voter, increased the odds that the votes would be counted. With fewer machines per voter—a widespread problem in Ohio this time, as noted above—polling places became more crowded and voters were less likely to take the time to check or correct their ballots.

- The residual vote rate is higher in precincts where the proportion voting for Kerry was higher.

H. The study findings and independent analysis indicate that the use of DRE (touchscreen) machines is highly problematic and the use of precinct-tabulated optical scan systems is vastly preferable if accessibility issues can be successfully addressed.

- As the study findings summarized above indicate, use of DRE (touchscreen) machines was problematic in terms of deterring voters, voters reporting experiencing problems, long waits and, where machines were scarce, which was widespread, actual loss of votes—i.e., votes cast but not counted.

- Team experts have confirmed that DRE (touchscreen) systems are consistently shown to have higher residual vote rates than optical scan systems even though DRE systems are specifically designed to produce high valid vote rates.

- Our team expert points out that current DRE (touchscreen) systems are extremely expensive to procure and maintain—which makes it unlikely that sufficient numbers could ever be purchased to remedy the scarcity problems detected in the study.

- While there is no reliable evidence of actual fraud in the use of these machines in Ohio in 2004, our expert advises that DRE (touchscreen) machines are not sufficiently safeguarded against fraud and are less usable for the broad population of voters than earlier simpler technologies; and that existing standards and practices for certification are insufficient to ensure the security requirements of DRE (touchscreen) systems.

- A voter-verified paper trail or equivalent system would address the security of DRE (touchscreen) systems while preserving their attractive features such as enhanced accessibility for disabled voters.

- Precinct based optical scan systems remain superior, however, with respect to ensuring that everyone's vote is counted.

- One attractive alternative is the use of a computer-assisted optical scan ballot marking device, which would enable voters who need the accessibility feature of DRE (touchscreen) systems to use a computer to actually mark the optical scan ballot. Other voters would use a standard marking pen. Only one computer device per precinct would likely be necessary.

I. The statistical study of precinct-level data does not suggest the occurrence of widespread fraud that systematically misallocated votes from Kerry to Bush.

- The tendency to vote for Kerry in 2004 was the same as the tendency to vote for the Democratic candidate for governor in 2002 (Hagan). That the pattern of voting for Kerry is so similar to the pattern of voting for the Democratic candidate for governor in 2002 is, in the opinion of the team's political science experts, strong evidence against the claim that widespread fraud systematically misallocated votes from Kerry to Bush.

- Kerry's support across precincts also increased with the support for Eric Fingerhut, the Democratic nominee for U.S. Senate, and decreased with the support for Issue 1 (ballot initiative opposing same-sex marriage) and increased with the proportion of African American votes. Again this is the pattern that would be expected and is not consistent with claims of widespread fraud that misallocated votes from Kerry to Bush.

July 23, 2008

The Honorable Jerrold Nadler, Chairman
The Honorable Trent Franks, Ranking Member
Subcommittee on the Constitution, Civil Rights, and Civil Liberties
Committee on the Judiciary
B353 Rayburn House Office Building
Washington, DC 20515

Re: Statement of People For the American Way,
Subcommittee Hearing: "Lessons Learned from the 2004 Presidential Election"

Dear Chairman Nadler and Ranking Member Franks:

On behalf of the hundreds of thousands of members of People For the American Way, I thank you for the opportunity to submit this statement for the record of the hearing entitled "Lessons Learned from the 2004 Presidential Election." The right to vote is fundamental, and since our founding by Norman Lear, Barbara Jordan, and other civic, religious, business and civil rights leaders, People For the American Way has sought to empower those who have been traditionally underrepresented at the polls, particularly young voters and people of color.

Earlier this year, People For the American Way announced its support[1] for the Committee's investigation into serious problems and voter suppression activities that took place in Ohio under former Secretary of State J. Kenneth Blackwell. There is no question that numerous problems were uncovered during the 2004 elections in Ohio. In addition to massive Election Protection mobilization efforts that took place throughout Ohio, our affiliate People For the American Way Foundation hosted multiple hearings in Cleveland and Columbus in order to document voters' problems. In fact, as a result of these hearings and the thousands of complaints collected through the Election Protection coalition, People For the American Way Foundation and other voting rights allies including the National Voting Rights Institute and the Lawyers' Committee for Civil Rights Under Law, filed a lawsuit on behalf of the League of Women Voters in Ohio and other individual plaintiffs against Secretary Blackwell. The lawsuit sought a change in the state's maladministration of the voting process.

Programs such as Election Protection have served to protect voters at the polls and address the real problems in our electoral system. The Election Protection coalition has been able to identify and document actual problems at the polls and provide recommendations for positive reforms. This has been accomplished through the coordination and deployment of thousands of volunteers across the country to serve as poll monitors to assist voters as they attempted to exercise their right to vote. The data collected from volunteers and voters through reports from the field and through the Election Protection Hotline clearly evidence a need for election officials to address the issues such as voter harassment and intimidation, deceptive practices, voter caging, non-

[1] Enclosed.

2000 M Street, NW ♦ Suite 400 ♦ Washington, DC 20036
Telephone 202.467.4999 ♦ Fax 202.293.2672 ♦ E-mail pfaw@pfaw.org ♦ Web site http://www.pfaw.org

compliance with minority language and accessibility laws to name a few. In 2004, People For the American Way Foundation and our allies released a preliminary report entitled, "Shattering the Myth, An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections,"[2] which exposed some of those stories, including:

- "Republican challengers were physically blocking access to polls with cars and bodies." [Kalamazoo, Michigan]

- "A first time voter was denied the opportunity to vote. He had difficulty with the lever used to close the booth and when he asked a question, he was told to use the lever to close it. However, closing it caused him to cast a blank ballot. Then he was told to leave because there were no provisions for his mistakes." [Warren County, Michigan]

- "One Republican poll challenger was reported by several voters to be intimidating poll workers and voters by standing too close to poll workers, writing down things and calling out on his phone. He was described as very aggressive in his actions. Voters called police who threatened to arrest challenger, but he chose to leave at that point." [Wayne County, Michigan]

- "A report came in of black voters in a predominantly white neighborhood being challenged by Republican challengers who requested proof of ID, residence, and signature. The challengers reportedly did not make similar demands on white voters. At the same polling place, when black voters asked questions of election officials, the officials reportedly refused to answer, telling them "it's very simple," while providing white voters with any requested information or assistance." [St. Louis, Missouri]

- "A voter registered to vote in September. When she went to the polling place on Election Day, they said she was not registered and refused to give her a provisional ballot." [Cuyahoga County, Ohio]

- "One entire polling place in had to 'shut down' at 9:25am on Election Day because there were no working machines. It is unclear whether this polling place ever re-opened." [Cuyahoga County, Ohio]

- "A voter in Franklin County received information purporting to be from the county alerting him that since he moved, he would have to vote by provisional ballot. The voter had not moved and had lived at the address for 10-15 years." [Franklin County, Ohio]

Additionally, the Election Protection coalition received and responded to numerous complaints throughout the country in the 2006 election. What we found was that dirty tricks and deceptive practices were as pervasive and brazen as ever. In Orange County, California, a Congressional candidate sent out letters in Spanish to approximately 14,000 Hispanic registered voters warning

[2] Enclosed.

it was a crime for immigrants to vote in federal elections, and threatening voters that there citizenship status would be checked against a federal database. Since immigrants who are naturalized citizens have as much right to vote as any other citizen, and since no such database is used in elections, these statements were outright lies. In Maryland, fliers were handed out in Prince Georges County and predominantly African American neighborhoods with the heading "Democratic Sample Ballot" and photos of Democrat Kweisi Mfume, along with the names of the Republican candidates for Senator and Governor, implying an endorsement. Voters in Virginia received recorded "robocalls," sometimes late at night that falsely stated that the recipient of the call was registered in another State and would face criminal charges if they came to the polls.

2006 also brought several reports from voters in Pima County, Arizona that a group of people, likely associated with "United States Constitution Enforcement (USCE)," were appearing at various polling locations under the pretext of preventing illegal immigrants from voting fraudulently. In Dona Ana County, New Mexico, a voter received several campaign phone calls telling her to vote, but at a polling place that didn't exist. Furthermore, in Accomack and Northampton Counties, Virginia, the Election Protection coalition documented complaints from democratic voters who reported receiving phone calls from purported election officials advising that they don't need to vote on Election Day and would be prosecuted if they showed up at the polls.

The Election Protection coalition was also active during the 2008 primary season. In February, People For the American Way Foundation issued a report, "Will Problems in Early Primaries Affect the Buckeye State?"[3] It documents the persistent problems voters experienced on Super Tuesday, in the Potomac primaries, and other recent federal elections, forecasting the kinds of problems that Ohio might see in its own election, and offering possible solutions for election officials. On March 4, poll monitors and roving attorneys were dispatched in key precincts in Cuyahoga County to assist voters with questions about where and when to vote, what kinds of ID were required, and what to do if their names were somehow removed from the voting lists, they were directed to the wrong polling place, or they were challenged at the polls. Volunteers also distributed Voters' Bills of Rights. The coalition's toll-free voter assistance hotline, 1-866-OUR VOTE, was available statewide to provide voters with live, free legal and general assistance to help them vote. National organizations like People For the American Way Foundation, Advancement Project, the National Association for the Advancement of Colored People, the Lawyers' Committee for the Civil Rights Under Law, and the African American Ministers Leadership Council's Victory Through Voting program were joined in this effort by SEIU Local 1199, United Pastors in Mission, and Progress Ohio.

Election Protection will continue leading up to and on Election Day, November 4. Currently People For the American Way Foundation is developing toolkits to arm voters in key states with knowledge about voter ID requirements and their voting rights. Michigan[4] and Ohio toolkits are already available on the Democracy Campaign web site[5]. More states will soon follow.

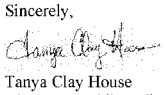
---

[3] Enclosed.
[4] Enclosed.
[5] http://www.workingfordemocracy.org

People For the American Way agrees that the integrity of the electoral process must be protected, but this can only be done by addressing actual problems that truly serve to undermine voter participation and confidence. Such problems include procedures and actions by individuals and election administrators that will prevent eligible voters from participating in the electoral process. Voter intimidation and harassment of voters at the polls are some of the more obvious forms of activities that disenfranchise voters and contribute to a lack of integrity in our election process. Actions such as election officials removing eligible voters from the registration rolls, the destruction of voter registration cards because of registrants' political affiliation, and the mass challenging of minority voters at the polling places also must be addressed.

People For the American Way looks forward to working with Congress to protect the fundamental right to vote for all Americans. In order to do that we must focus on enacting positive reforms and removing barriers to the ballot. Our goal is simple and should be unquestioned in the United States of America: an electoral system that guarantees every citizen the right to vote and that facilitates rather than frustrates every citizen's ability to cast a vote that is fairly and accurately counted.

Sincerely,



Tanya Clay House
Directory, Public Policy

February 26, 2008

The Honorable Jerrold Nadler, Chairman
House Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties
B-353 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Nadler:

On behalf of the more than one million members and activists of People For the American Way (PFAW), I would like to extend our full support for the Committee's investigation into the serious problems and voter suppression activities that took place in Ohio under former Secretary of State J. Kenneth Blackwell.

There is no question that numerous problems were uncovered during the 2004 elections in Ohio. In addition to massive Election Protection mobilization efforts that took place throughout Ohio, our affiliate PFAW Foundation hosted multiple hearings in Cleveland and Columbus in order to document voters' problems. In fact, as a result of these hearings and the thousands of complaints collected through the Election Protection coalition, PFAW Foundation and other voting rights allies including the National Voting Rights Institute and the Lawyers' Committee for Civil Rights Under Law, filed a lawsuit on behalf of the League of Women Voters in Ohio and other individual plaintiffs against Secretary Blackwell. The lawsuit sought a change in the state's maladministration of the voting process.

For these reasons and more, PFAW urges the Committee to diligently pursue its investigations into voter suppression tactics and continue to exercise the necessary oversight of the Department of Justice's obligations to protect the rights of American voters.

Sincerely,

Tanya Clay House
Director, Public Policy

Attmt

2000 M Street, NW ♦ Suite 400 ♦ Washington, DC 20036
Telephone 202.467.4999 ♦ Fax 202.293.2672 ♦ E-mail pfaw@pfaw.org ♦ Web site http://www.pfaw.org

SPECIAL REPORT

SHATTERING THE MYTH:

An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections

People For the American Way Foundation
Ralph G. Neas, President
2000 M Street NW, Suite 400
Washington, DC 20036
202/467-4999
www.pfaw.org

Julian Bond, Chairman
4805 Mt. Hope Drive
Baltimore, MD 21215
410/358-8900
www.naacp.org

Barbara R. Arnwine, Executive Director
1401 New York Ave., NW, Suite 400
Washington, D.C. 20005
888/299-5227
www.lawyerscommittee.org

December 2004

ELECTION PROTECTION 2004

Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections

Acknowledgements

The Election Protection Coalition is a broad-based collaboration of national, state and local organizations. To date, the following national organizations have worked together on Election Protection-related efforts: People For the American Way Foundation, Lawyers' Committee for Civil Rights Under Law, the National Coalition on Black Civic Participation, the Voter Protection Project of America's Families United, American Federation of Labor – Congress of Industrial Organizations, the National Association for the Advancement of Colored People, the Advancement Project, the NAACP Legal Defense & Educational Fund, the Mexican American Legal Defense and Educational Fund, the League of United Latin American Citizens, Unity '04, the National Bar Association, the National Council of La Raza, Labor Council for Latin American Advancement, Artists for a New South Africa, National Newspaper Publishers Association, National Association of Latino Elected and Appointed Officials, the American Civil Liberties Union, Working Assets, Project Vote, Common Cause, USAction, Center for Community Change, League of Women Voters, True Majority, Electronic Frontier Foundation, California Voter Fund, Verified Voting Foundation, Computer Professionals for Social Responsibility, the National Asian Pacific American Legal Consortium, the Gamaliel Foundation, the National Council of Churches, United Church of Christ, Unitarian Universalists, Union for Reform Judaism, Jim Wallace of Sojourners Magazine/Call to Renewal, National Latina/o Law Students Association, VoteWatch, the Native American Rights Fund, the Leadership Conference on Civil Rights, the American Association of People with Disabilities, the Asian American Legal Defense and Education Fund, Rock the Vote, the National Congress of American Indians, the UniverSoul Circus, the National Black Law Students Association, IMPACT 2004, Just Democracy, Demos, the Brennan Center, the American Constitution Society, the Public Interest Research Group, and the Southern Regional Council, among others.

TABLE OF CONTENTS

EXECUTIVE SUMMARY 1

OVERVIEW 1

ELECTION PROTECTION IN ACTION 2

ELECTION PROTECTION: PROBLEMS DOCUMENTED 6

LOOKING FORWARD: ELECTION PROTECTION AND AN AGENDA FOR CHANGE 9

A CLEAR STANDARD AND A MORAL IMPERATIVE 12

ELECTION PROTECTION 2004: STATES AT-A-GLANCE 13

INTRODUCTION 13

TIER 1 STATES 14

Florida Election Protection At-a-Glance 14
Ohio Election Protection At-a-Glance 20
Pennsylvania Election Protection At-a-Glance 24
Arizona Election Protection At-a-Glance 29
Illinois Election Protection At-a-Glance 33
Michigan Election Protection At-a-Glance 37
New Mexico Election Protection At-a-Glance 42
Wisconsin Election Protection At-a-Glance 44
Colorado Election Protection At-a-Glance 46

TIER 2 STATES 51

Missouri Election Protection At-a-Glance 51
Nevada Election Protection At-a-Glance 54
North Carolina Election Protection At-a-Glance 57
Arkansas Election Protection At-a-Glance 60
Minnesota Election Protection At-a-Glance 62

TIER 3 STATES 64

Texas Election Protection At-a-Glance 64
Georgia Election Protection At-a-Glance 70
Louisiana Election Protection At-a-Glance 73

ELECTION PROTECTION 2004
Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections

EXECUTIVE SUMMARY

OVERVIEW

The unprecedented voting rights mobilization undertaken by the Election Protection Coalition helped millions of Americans exercise their fundamental right to vote in 2004. In addition to its direct service to voters, the Election Protection Coalition successfully collected data on the myriad of problems inherent in our electoral system and has begun to create, for the first time, a comprehensive picture of the barriers that voters face as they go to the polls. Unfortunately, we have documented systemic problems that resulted in the widespread disenfranchisement of American voters. These unacceptable barriers to voting betray our nation's democratic principles and undermine the fairness of our elections. The rush of relief led by pundits and politicians that the presidential campaign did not extend into a long post-election legal contest must not be permitted to disguise the urgent need for systematic reforms at the national, state, and local levels.

This preliminary summary provides an initial view of the types of reports and problems experienced by the Election Protection Coalition during the 2004 Presidential Election Cycle. To date more than 39,000 complaints have been recorded in the Electronic Incident Reporting System (EIRS) database with thousands more still be added. These problems must be analyzed, publicized, and remedied. The margin of victory in the Presidential election led to the popular misconception that the election went smoothly; this summary aims to address that misconception by highlighting the problems voters across the nation encountered and gives voice to the disturbingly large number of citizens who were unable to cast a ballot because of obstacles to the ballot box.

The complaints reviewed were captured in the Election Incident Reporting System (EIRS), a database of complaints and incidents recorded through the activities of the Election Protection Coalition. In 2005 Election Protection will release a comprehensive report of the data gathered through EIRS. We will work with both statistical and social science professionals to create a thorough analysis of the barriers Americans face throughout the voting process. In addition to the data collected through the Election Protection Program, the final report will reflect information obtained through the Freedom of Information Act and interviews and hearings with voters and election officials across the country.

ELECTION PROTECTION IN ACTION

Election Protection 2004 was a massive 18-month effort, involving hundreds of organizations and tens of thousands of citizens, to protect voting rights in traditionally disenfranchised communities across the nation. Election Protection mounted extensive field efforts in 17 states. The dramatic scale of this collaborative, non-partisan effort made it the largest ever voting rights mobilization, ten times larger than the legendary "Freedom Summer" of 1965 according to Julian Bond of the NAACP.

People For the American Way Foundation, the Lawyers' Committee for Civil Rights Under Law, and the NAACP prepared this preliminary summary to highlight the extensive problems voters continue to face in exercising the franchise and shatter the myth that the 2004 Presidential election went smoothly.

Leaders of the Election Protection Coalition include: PFAW Foundation, the Lawyers' Committee, the National Coalition on Black Civic Participation, the NAACP, the Voter Protection Project of America's Families United, AFL-CIO, Advancement Project, Working Assets, ACORN, SEIU, LULAC, AFSCME, MALDEF, Wellstone Action, the NAACP Legal Defense and Educational Fund, the League of Women Voters, the National Council of La Raza, and Common Cause.

The scale of Election Protection 2004 was inspiring; the complexity of this multi-faceted undertaking made it extraordinarily comprehensive. Election Protection's multiple components included:

- Pre-election advocacy, including litigation, grassroots organizing and media
- Large-scale recruitment, training and deployment of 25,000 poll monitors, operating out of 56 field offices, to provide same-day assistance to voters in targeted precincts
- National toll-free Voters' Rights Hotline (1-866-Our Vote)
- Web sites, including www.ElectionProtection2004, www.mypollingplace.com, and www.ourvote.com
- GOTV and voters' rights public service announcements and paid radio spots featuring stars such as Angela Basset, Danny Glover and Chris Rock
- Extensive earned media coverage
- Preparations of state specific legal manuals and millions of Bills of Rights summarizing state and local electoral procedures
- Meeting with state and local election officials
- Legal command centers in over 30 states with trained attorney volunteers helping voters on and before Election Day overcome legal obstacles

Advocacy and Legal Activities
Long before Election Day, Election Protection cooperated with election officials to eliminate barriers to the ballot box, and where necessary, battled egregious decisions and tactics that increased the likelihood of widespread disenfranchisement. Through

litigation, grassroots organizing and earned media strategies, the Election Protection Coalition successfully resolved many challenges in voters' favor. For example, in Volusia County and Duval County, Florida, officials were forced to add early voting sites in response to complaints from minority voters. On an on-going basis Election Protection continues to seek prospective election reform through its legal efforts. Other pre-election examples include:

- We attempted to counter pre-election decisions from Secretaries of State and local election officials that affected voter registration procedures and potentially disenfranchised thousands of voters before they ever made it on to the registration rolls or into the voting booth. Some issues were peculiar to a state or locality. One example was Ohio Secretary of State Kenneth Blackwell's ridiculous assertion that registration applications be printed on 80-pound paper, before public outcry, led by local and national Election Protection partners, forced him to back down.

- In Waller County, Texas, we successfully sued the local district attorney when he threatened students from Prairie View A&M with prosecution if they registered as county residents. He publicly retreated from this position as a result of the lawsuit.

- In a flashback to the 2000 Presidential Election controversy over the flawed felon purge list, Election Protection lawyers were involved in efforts to force Florida Secretary Hood to eliminate the use by county election officials of yet another flawed felon list consisting of over 40,000 names. The advocacy of Election Protection partners, coupled with litigation and analysis by media organizations, led the state to scrap the list, resulting in the enfranchisement of tens of thousands of citizens throughout the state of Florida.

- In New Mexico, we supported Secretary of State Rebecca Virgil-Giron's successful battle against attempts by some county election officials to impose additional voting barriers on new registrants, many of whom were Hispanics, by requiring them to show ID unless they registered in their election official's offices. This was an inappropriate extension of the federal requirements of HAVA. Ultimately, this blatant violation of state law was overturned by the State Supreme Court in a lawsuit brought by Secretary Virgil-Giron.

- Election Protection lawyers and others continually challenged in the courts unfair directives issued by state and county election officials limiting the effectiveness of provisional ballots required under HAVA. Challenges were brought in a number of states including Florida, Ohio, Michigan, and Colorado, with mixed results.

- Election Protection lawyers also challenged Florida Secretary of State Glenda Hood's claim that registrants who failed to check the "citizenship" box on their application should be rejected, despite the fact that signing the form itself was a

clear declaration of citizenship. A lawsuit addressing this and similar requirements was dismissed on procedural grounds just before the election. An appeal and additional post-election court proceedings are continuing.

- Election Protection advocates successfully limited the disenfranchising impact of frivolous partisan challengers in Ohio. Election Protection was instrumental in successfully combating approximately 35,000 challenges to validly registered voters before Election Day. In addition to challenging pre-Election Day challengers, Election Protection objected to a directive of the Ohio Secretary of State requiring election officials to allow multiple partisan challengers in the polling place with mixed results.

- Election Protection lawyers successfully challenged the Ohio Secretary of State's directive refusing to allow voters who requested absentee ballots, including many who never received those ballots, to cast a provisional ballot at their polling place. In addition to violating the Help America Vote Act, this directive was particularly nefarious considering that many counties across the state were unable to send absentee ballots to voters in time for those ballots to be cast and counted.

- Election Protection advocates obtained legal opinions from the Iowa Attorney General's office 1) denouncing the Iowa election procedure that denied the right to vote in federal elections to citizens who failed to check a box on the registration form designating U.S. citizenship, even though these citizens signed an oath on their voter registration form declaring that they are U.S. citizens (and otherwise qualified to vote) and 2) calling for all boards of elections to count provisional ballots cast in an incorrect precinct as long as they were cast in the correct county.

- In Atkinson County, Georgia, Election Protection lawyers and advocates responded to discriminatory challenges to the citizenship qualifications of nearly 90% of that county's Latino voters. In response to the legal and activist pressure of Election Protection, the County Registrar rejected the challenges.

Election Day Mobilization

Despite Herculean pre-election efforts, significant challenges remained. The November 1st Barriers to Voting report by PFAW Foundation, Lawyers' Committee, and the NAACP and the pre-election activity of the Election Protection Coalition documented alarming trends on the eve of the election, including:

- Nationwide problems of absentee ballot errors and delays in processing
- Decisions likely to result in leaving thousands of provisional ballots uncounted
- Potential for long lines at polls that could discourage or prevent some people from voting

- A strategy by Republican Party officials to launch last-minute challenges to voter registrations by the tens of thousands in several states, a variation on the so-called "ballot integrity" strategies of the past
- An aggressive strategy to place extraordinary numbers of partisan challengers inside polling places to challenge individual voters as they try to cast their votes
- Anonymous flyers, fake letters and misleading phone calls giving voters false information about polling places and voting regulations, or falsely advising voters to vote by phone
- House-to-house voter scams wrongly informing voters that they can vote on a laptop, record their votes with a visitor or hand over their absentee ballots to fake election officials
- Numerous reports of voter registration workers assigning new registrants to political parties without their knowledge or consent, or of voter registrations being destroyed by private groups on the basis of political preference

Thus, as Election Protection volunteers participated in Election eve trainings, two things were very clear: that they would be called on to deal with county-wide problems and policies as well as assist individual voters who were threatened with disenfranchisement, and that their presence could serve as a vital deterrent, minimizing the potential abuses.

The volunteer mobilization that made Election Protection possible was awe-inspiring; it met, even exceeded in many cities, the extremely ambitious goals set at the beginning of the year. The non-partisan Election Protection coalition recruited, deployed, and managed more than 25,000 volunteers, including more than 8,000 lawyers and law students, in over 3,500 precincts and Hotline call centers around the country to provide same-day assistance to help ensure voters could cast votes that count. In the targeted precincts, volunteers distributed more than five million GOTV pieces of literature that included state-specific Voters' Bills of Rights.

Election Protection volunteers played a critical role on Election Day:

- Contacting county and local election officials to address machine failures or to get more machines at polling places
- Obtaining the correct precincts and polling places for displaced voters
- Helping to maintain an environment free from harassment and voter intimidation at polling places by:
  - contacting the local police when necessary to remove intimidating persons
  - encouraging the removal of police officers from polling places whose presence was intimidating voters
- Driving voters to their correct polling place
- Monitoring polling place lines and informing the local and county election officials of problems
- Working with poll workers to educate them on proper identification and provisional ballot requirements
- Dispelling myths about voters' rights, e.g., that a person can't vote if they have a traffic ticket

- Contacting local and county election officials about insufficient notice of polling place changes, and when necessary, creating signs and personally redirecting voters to the correct places
- Translating voting materials for voters
- Assisting elderly and voters with disabilities by:
  - personally carrying disabled voters from their car so they could vote
  - helping elderly voters to read and understand voting materials
- Reassuring voters while they stood in long lines
- Ensuring that polling places remained open until the last voters cast their vote

Volunteer lawyers and law students fielded more than 200,000 calls from voters through the national toll-free 1-866-OUR-VOTE Election Protection Voters' Hotline. Over 100,000 of those calls were on Election Day. Calls were routed to 20 call centers, from Baltimore to Anchorage, including national call centers in Washington, D.C., New York City, and San Francisco. PFAW Foundation's website, www.mypollingplace.com, helped more than three million voters on Election Day alone determine their voting location and preview the voting machinery they would use.

ELECTION PROTECTION: PROBLEMS DOCUMENTED

While we take comfort in Election Protection's successes, the massive deployment helped expose serious systemic failures. The myth that Election 2004 ran smoothly with limited irregularities is simply not true.

Although there are particularly alarming complaints in all categories, a large proportion of complaints documented in the EIRS database concern voter registration and absentee ballot problems. As documented in two recent joint reports published by PFAW Foundation and the NAACP, voter intimidation and suppression schemes continue to be prevalent nearly 40 years after the passage of the Voting Rights Act of 1965. Election Protection 2004's efforts documented the incredible barriers that continue to confront voters through misinformation campaigns and coordinated suppression tactics.

This report represents a preliminary analysis of the more than 39,000 complaints recorded to date in the Election Incident Reporting System (EIRS) database based on calls to the Voters' Hotline and reports filed by poll monitors in targeted Election Protection precincts. While this number represents many of the incidents collected by Election Protection, the database is incomplete. We continue to receive complaints and there are thousands still to be entered. It is important to note that each EIRS entry often reflects a problem that affects many, sometimes hundreds, of voters.

Election Protection targeted traditionally disenfranchised communities across the nation. We mounted extensive field efforts in 17 states: Florida, Ohio, Pennsylvania, Arizona, Michigan, Wisconsin, New Mexico, Illinois, Colorado, Minnesota, Nevada, Missouri, Texas, North Carolina, Louisiana, Georgia, and Arkansas. Therefore, the problems

surfaced by our volunteers and through our toll-free Hotline calls represent only the tip of the iceberg.

The top five currently-reported problems in the EIRS database are:

- Registration Processing
- Absentee Ballots
- Machine Errors
- Voter Suppression or Intimidation
- Provisional Ballots

More than ten thousand reports of registration problems: Complaints ranged from voters who registered by the registration deadline but did not show up on the voter lists to many reports of registration cards with incorrect information, including the location of polling places.

Thousands of complaints concerning absentee ballots: Voters complained about absentee ballots that did not arrive within the official deadlines, arrived far too late for the voters to use them, or simply never arrived. Most egregious was Ohio Secretary of State Kenneth Blackwell's decision to turn such voters away from the polls on Election Day without allowing them to vote with a provisional ballot. Election Protection lawyers filed suit, which was successful in forcing the state to require poll workers to provide provisional ballots to those voters.

Thousands of complaints concerning voting system errors: Many voters reported concerns that the machines did not accurately record their choice in the presidential and other races or did not record their votes at all. Without a voter-verified audit trail, voters could not confirm that their votes had been recorded as they intended.

More than a thousand complaints of voter suppression or intimidation: Complaints ranged from intimidating experiences at polling places to coordinated suppression tactics. For example:

- Police stationed outside a Cook County, Illinois, polling place were requesting photo ID and telling voters if they had been convicted of a felony that they could not vote.
- In Pima, Arizona, voters at multiple polls were confronted by an individual, wearing a black tee shirt with "US Constitution Enforcer" and a military-style belt that gave the appearance he was armed. He asked voters if they were citizens, accompanied by a cameraman who filmed the encounters.
- There were numerous incidents of intimidation by partisan challengers at predominately low income and minority precincts
- Voters repeatedly complained about misinformation campaigns via flyers or phone calls encouraging them to vote on a day other than November 2, 2004 or of false information regarding their right to vote. In Polk County,

Florida, for example, a voter received a call telling her to vote on November 3. Similar complaints were also reported in other counties throughout Florida. In Wisconsin and elsewhere voters received flyers that said:

- "If you already voted in any election this year, you can't vote in the Presidential Election."
- "If anybody in your family has ever been found guilty of anything you can't vote in the Presidential Election."
- "If you violate any of these laws, you can get 10 years in prison and your children will be taken away from you."

More than a thousand complaints concerning provisional ballots: There was widespread confusion over the proper use of provisional ballots, and widely differing regulations from state to state—even from one polling place to the next—as to the use and ultimate recording of these ballots. Many voters reported that poll workers were either refusing to give out provisional ballots or simply unaware of the federal requirements to distribute provisional ballots. Notably, many voters who complained of not being listed on the voter registration list subsequently complained either about not being offered provisional ballots or of not knowing whether they would ultimately be counted.

Voters with disabilities and those in low-income areas and precincts with a high percentage of minority voters experienced other significant barriers to voting. Among the problems reported by voters and Election Protection poll monitors:

- **Long Lines:** We received numerous complaints of long lines and waits of up to ten hours to cast a ballot, especially in urban districts with too few voting stations. The lines inevitably led to untold numbers of voters who were disenfranchised because they could not afford to wait, and had to return to their jobs or their children before they had a chance to cast a vote. Further, reports of these long lines discouraged large numbers of voters from even attempting to cast their vote. Voters faced not only long lines, but also antiquated and faulty equipment and polling places with too few adequately trained poll workers or voting machines. In some minority communities there appeared to have been inequitable distribution of voting machines and Election Day resources that likely contributed to longer lines.

- **Disability Access and Disenfranchisement:** There were many reports of difficulties for voters with disabilities, from physical access to the voting booth to the denial of necessary materials and assistance in the voting process itself.

- **Inaccurate Guidance:** We received numerous reports of voter registration cards or other official materials directing voters to the wrong precinct, where they sometimes waited in line for hours only to find themselves directed to another long line at a different precinct.

- **Language Assistance:** We received complaints about not having ballots and voting materials in Spanish and other languages in violation of the Voting Rights Act or state and local election law.

LOOKING FORWARD: ELECTION PROTECTION AND AN AGENDA FOR CHANGE

It is critical that we not lose the tremendous momentum that Election Protection has built among volunteers, activists and citizens, nor lose the advantage of the public and media spotlight that is focused on election problems. PFAW Foundation, the Lawyers' Committee, and the NAACP will work with their allies to implement a multifaceted post-election strategy to identify, document, and find remedies to disenfranchisement. This document is an initial report on information collected by poll monitors, attorneys, and individual voters to begin to identify a comprehensive legal and legislative strategy for reform.

Among the areas of activity are:

- Documentation of voting irregularities and voter suppression efforts as well as systemic inequities regarding voting machines and related resources in communities of color, including comprehensive analysis of the Election Information Reporting System (EIRS) data, submission of public record requests, and public hearings in eight target states; and,
- Pursuit of remedial relief through litigation; organizing at the national, state, and local levels; and advocacy of a reform agenda.

Documentation of Voting Irregularities, Voter Suppression Incidents

Comprehensive Analysis and Report

This preliminary summary is the first step toward the publication of a comprehensive report documenting the variety and extent of problems as well as the scope of Election Protection efforts. We will work with both statistical and social science professionals to create a thorough analysis of the barriers Americans' face throughout the voting process. Sources for that report will include the Electronic Incident Recording System (EIRS) database as well as information obtained through the public information requests and hearings discussed below.

Public Records Requests

Election Protection is beginning an effort to request and examine public records relating to possible voting irregularities, including county-level information related to discrepancies between the number of registered voters and recorded ballots, as well as any directives on how absentee and provisional ballots would be evaluated, accepted, or rejected. Our initial requests reflected problems identified by volunteers on the ground as

well as media reports; we expect continuing analysis of the data will identify additional areas for research.

Another important research project will use public record requests and other methods to document and analyze what appear to be major inequities in the number of voting machines, ballots, staff, and voter education resources per capita in urban communities of color versus wealthier suburban communities. Documenting the extent of these inequities and the disenfranchisement they caused could provide the basis for legislative proposals as well as possible litigation.

Public Hearings
Election Protection is working with allied organizations to plan and conduct a series of public hearings in at least eight states (Ohio, Florida, Pennsylvania, Arizona, Michigan, New Mexico, Colorado and Texas), which will allow us to gather additional information on inequities, irregularities, and voter suppression efforts, and to keep voting problems and the people affected by them before the media. The first well-attended hearings were held in Columbus, Ohio, on November 13 and 15, and brought to light memorable first-person stories, such as authorities towing vehicles of voters standing in long lines, as well as reports from voting officials, such as a precinct worker who reported receiving half as many voting machines in 2004 as the precinct had in 2000 despite knowledge of dramatic increases in voter registration and expected turnout.

Remedies and Reform

Achieving the kind of fundamental electoral reforms necessary to ensure that every eligible voter has an opportunity to vote and to have that vote counted will require a systematic multi-year campaign that will include litigation, legislation, and mobilization of advocates for reform at the local, state, and national levels.

Legal Action
Election Protection lawyers are pursuing and exploring litigation on a variety of election issues. Currently pending, for example, is a lawsuit challenging the misapplication of the "50 foot-rule" in Palm Beach County, a challenge to Department of Homeland Security limitations on voter registration outside citizenship ceremonies, a lawsuit challenging arbitrary rules leading to the rejection of thousands of provisional ballots in Cuyahoga County, Ohio, and litigation challenging the rejection of thousands of voter registrations in Florida, including many that were rejected if voters did not check a citizenship box, even though the same form included a signed affirmation of citizenship. In Ohio, Florida, and elsewhere, we are actively exploring litigation on absentee ballot problems (we have already cooperated with the ACLU on a preliminary challenge in Florida around Election Day), failure to provide access or assistance to voters with disabilities, additional registration issues, problems in the casting and counting of provisional ballots, and long lines in minority communities.

Election Protection is also supporting the efforts of the Electronic Frontier Foundation and others to obtain backup data from DRE electronic voting machines in counties in

Florida, Ohio, Pennsylvania, and New Mexico, which has already led to additional litigation.

We have applauded the federal Government Accountability Office's decision to investigate systemic voting problems as requested by several members of Congress, and we have urged GAO to continue to evaluate the performance of the Department of Justice in this area. (A September GAO analysis reported that DOJ lacked a consistent internal system for documenting and tracking reports of voting problems.)

Reform Agenda

In addition to pursuing remedies through litigation, Election Protection is developing a comprehensive agenda of necessary policy changes at the local, state, and national levels, as well as a plan of action to advance these reforms in the coming months and years.

This election cycle provided Election Protection an opportunity to observe and monitor the impact that the Help America Vote Act (HAVA) had on election administration at the national, state, and local level. While the Coalition will continue to work with policy makers to ensure that the protections HAVA requires are enforced, we will use our experience to illustrate the strengths and weaknesses in the Act.

As mentioned above, the Coalition engaged in unprecedented data collection providing a picture of voting irregularities that will serve as a record for election reform. Consequently, it is critical that efforts to reform our electoral system are not constrained by HAVA. While we continue to support existing legislative voter protections, we must start anew and develop policy and legislative recommendations that address the totality of obstacles that Americans face in their exercise of the fundamental right to vote.

Among our preliminary recommendations:

National recommendations

- Full funding for the Help America Vote Act (HAVA)
- Increased support for voter education campaigns
- Immediate development of the technical guidelines for voting systems by the Election Assistance Commission (EAC)
- Support for required voter verified audit trails for all voting systems
- Public hearings by Congress, the EAC and possibly the Federal Election Commission
- Support for a report by the General Accounting Office on voting irregularities throughout the country

State and County Recommendations

Develop an election reform agenda for suggested changes to local, county and state election procedures to be submitted to respective election officials and legislators where necessary. Probable areas of concern include:

- absentee ballots

- distribution of voting machines and access to Election Day resources in minority and low-income areas
- registration procedures and application processing
- recruitment and proper training of poll workers on numerous issues, including but not limited to provisional ballots and ID requirements
- accurate and centralized statewide voter registration lists
- identification requirements
- enforcement and improvement of anti-voter-intimidation laws
- removing election administration from the portfolio of partisan officials

A Clear Standard and a Moral Imperative

Thousands of Americans from all walks of life joined the multiracial, multiethnic Election Protection coalition to insist that every eligible American be guaranteed the right to vote and to have that vote counted. Those volunteers have gathered concrete evidence and deepened our understanding of the problems facing voters, from inadequate and inequitably distributed machines to incompetence or malfeasance by public officials, to outright voter intimidation schemes.

It is clear that our voting system falls fall short of our democratic ideals. Local standards vary, national standards are unevenly applied, and inequities and uncertainties abound. Procedures for registration are unnecessarily complicated and daunting for new voters; election workers and poll workers are too few and inadequately trained; same day remedies for voters are rare and difficult to implement; there are few quick remedies to resolve instances of voter intimidation and suppression; and in many areas a strong voter turnout simply overwhelms the system and leads to disenfranchisement of thousands of eligible voters.

Election Protection and its allies are working to advance meaningful reforms at the state, local and national levels. We must remove barriers to voting, bring ever-increasing numbers of voters to the polls and foster an atmosphere where attempts at voter intimidation are criminally prosecuted and universally condemned.

Our goal is simple and should be unquestioned in the United States of America: an electoral system that guarantees every citizen the right to vote and facilitates rather than frustrates every citizen's ability to cast a vote that is fairly and accurately counted. Achieving this goal is the responsibility of our public officials, and we will work to hold them accountable for meeting this standard.

ELECTION PROTECTION 2004: STATES AT-A-GLANCE

INTRODUCTION

The following reports describe problems encountered by voters in the 17 states in which the Election Protection Coalition mounted extensive ground operations. These states are Florida, Ohio, Pennsylvania, Arizona, Michigan, Wisconsin, New Mexico, Illinois, Colorado, Minnesota, Nevada, Missouri, Texas, North Carolina, Louisiana, Georgia, and Arkansas. The state-by-state reports summarize and provide examples of the more than 39,000 complaints recorded to date in the Electronic Incident Reporting System (EIRS) database as reported by voters and by Election Day volunteers in the field and on the Voters' Hotline.

This is a preliminary snapshot of complaints reported through the EIRS as of November 24, 2004. In 2005 Election Protection will release a comprehensive report of data gathered through the EIRS. We will work with both statistical and social science professionals to create a thorough analysis of the barriers Americans' face throughout the voting process, based on EIRS data, information gathered through public records requests, and interviews and hearings with voters and election officials across the country.

TIER 1 STATES

Florida Election Protection At-a-Glance

Florida Summary

Election Protection's "Election Incident Reporting System" contains reports of election problems in counties across Florida. As of November 24, 2004, the majority of reports were from voters, volunteers, and even some election officials in the following counties, in descending order of number of complaints received:

- Broward
- Palm Beach
- Miami-Dade
- Duval
- Hillsborough
- Orange
- Leon

Based on the EIRS database, voting problems encountered in Florida included:

- Election official failures to deliver absentee ballots to voters who requested them and confusion about what to do for those who had not received them;
- Improper requests for identification;
- Problems with early voting, including long lines at the early voting locations, inadequate staffing, and machine failures;
- Voter registration related problems;
- Confusion about how to implement provisional ballot requirements;
- Concerns about the accuracy and functioning of voting machines;
- Some poll workers who were, at best untrained, and at worst, actively dissuading voters from casting votes; and
- Lack of required assistance for disabled voters.

Pre-Election Day Legal Activities

Leading up to Election Day, critical decisions were made by the courts, Secretary of State Glenda Hood and Supervisors of Elections throughout the state that had a significant effect on the vote. These decisions included:

- A federal judge rejected on procedural grounds a claim on behalf of thousands of Florida voters that their failure to check off boxes on their voter registration forms for U.S. citizenship, felony status or mental capacity was immaterial in light of their having signed their registration forms affirming their citizenship, mental capacity and felony status. This ruling is still on appeal.

- The State of Florida initially ordered the implementation of a "potential felon" purge list to remove voters from the rolls, in a disturbing echo of the infamous 2000 purge, which removed thousands of eligible voters, primarily African-Americans, from the rolls. The state abandoned the plan after pressure from civil rights groups and news media investigations revealed that the 2004 list also included thousands of people who were eligible to vote, and heavily targeted African-Americans while virtually ignoring Hispanic voters.

- A number of other pre-election lawsuits were filed with mixed results. For example, a federal judge granted a temporary restraining order against the Department of Homeland Security and the City of Miami Beach, which had refused to allow non-partisan groups to register new citizens outside a citizenship ceremony. Lawsuits challenging Florida's rule requiring that voters cast provisional ballots only in the correct precinct were unsuccessful. A lawsuit challenging the state's failure to set forth rules providing for recounts in counties using electronic voting machines was successful, although a challenge to the rules ultimately promulgated has not succeeded.

Early voting in Florida also presented new challenges for the voting system and those in charge of it. The following is a snapshot:

- Pressure from members of the EP coalition led to Duval and Volusia counties opening additional early voting sites. Duval initially had only one such site. Other counties with a comparable number of registered voters had nine early voting sites. Duval County has the highest percentage of African American voters -- 26 percent -- among Florida's large counties.

- Florida began early voting on October 18, in part to address the issues that plagued its Election Day in 2000. But some of the same problems resurfaced almost immediately, including long lines, trouble verifying voter registration data, lost computer connections, and complaints about placing too few early voting sites in African American neighborhoods.

Summary of Complaints and Questions in the State

Below is a sampling of the types of questions and complaints recorded in the EIRS database from voters and volunteers in Florida.

Absentee Ballot Problems: EP volunteers helped voters with questions and complaints regarding the use of absentee ballots. There were voters (1) who had problems when they requested absentee ballots, (2) who did not receive absentee ballots in time to vote, or (3) who received ballots they did not request. A disproportionate number of these reports originated from Broward County. There were several cases of military voters not receiving their absentee ballots. Below are examples of the kinds of complaints EP volunteers received:

- Up to 15,000 voters did not receive their absentee ballots in the mail in Broward County. The county had to resend some ballots and other voters were not able to vote at all because they did not receive their ballots in time. [Broward]

- Voters reported that while the envelope on the absentee ballot said that it required 60 cents in postage, it really cost 83 cents. (This problem was later addressed by the county.) [Broward]

Voter Registration Problems and Questions: EP volunteers helped voters with problems related to voter registration. There were voters who thought they had registered but had not received cards in the mail, and voters who were not included on the list of registered voters. Many of the registration problems were reports from voters who had moved and were unclear about their registration status and proper polling place or voters who registered through third-party organizations. There were also many reports of lost registration cards and registration cards with incorrect information on polling places. Below are some examples of the kinds of complaints EP volunteers received:

- A voter in Broward County had recently moved from Dade County. He tried to change his voter registration on several occasions, but never received a card. On Election Day, he went to Dade to vote, but they said he was on the list for Broward County, but with no precinct. The voter was unable to vote. [Broward]

- Several University of South Florida students who signed a petition on increasing penalties for child molestation had their voter

registration changed to Republican without their knowing it. [Hillsborough]

Voter Intimidation/Suppression: EP volunteers received complaints about suspected voter intimidation or unusual election-related activities. This category includes reports from voters who were prevented or discouraged from voting by election officials or third parties at the polls or by misleading information distributed in their community. We received several reports throughout Florida of police and sheriff presence at polling places that concerned voters. Below are some particularly troubling examples of the kinds of complaints EP volunteers received:

- There were numerous reports of misleading information.
  - Voters received calls telling them to vote on November 3. [Polk; Palm Beach]
  - A voter reported that someone told her she had voted in the wrong location and that she would be arrested and fined. [Orange]
  - A group was going around telling voters that they had until November 18th to vote. [Duval]
- Several voters of color reported that they were harassed and intimidated while trying to vote. An African-American male was searched for weapons when entering the polling place and no other voters appeared to receive the same treatment. [Alachua]

Provisional Ballot Problems: EP volunteers received complaints about provisional ballots from voters, ranging from inquiries into the provisional ballot system to workers unevenly applying or not understanding the new provisional ballot requirements. In some instances, voters requested provisional ballots and poll workers refused to provide them or provided them and then told the voter that "they wouldn't count anyway." Below is an example of the kinds of complaints EP volunteers received:

- Voters were denied the right to vote, even provisionally, because the voter's address on the driver's license did not match the address on the voter's registration information. [Miami-Dade; Orange]

Voting Machine Problems: EP volunteers received reports about problems with voting machines. Voters complained that machines were not working properly, were not recording their intended votes or had completely shut down on Election Day. Paper ballots were used in some instances when machines broke down, but this was not standard practice. There were particular problems with voting machines during early voting. Below are some examples of the kinds of complaints EP volunteers received:

- During early voting and on Election Day, voters expressed concerns that the machines were not properly recording their choices for President. [Palm Beach; Miami-Dade; Broward; Pinellas]

- We also received reports about optical scanners not working properly and voters having to drop their ballots into a box to be scanned later in some cases. [Brevard; Leon]

Identification Problems: EP volunteers helped voters with problems and questions related to identification requirements. During early voting and on Election Day many voters, particularly in Hillsborough and Miami-Dade Counties, reported that voter ID requirements were not being implemented appropriately. Poll workers were misapplying identification procedures, turning voters away who met the state's identification mandates. EP volunteers helped clarify the voter ID and registration card requirements for voters.

Disabled Access and Assistance Problems: EP volunteers received questions and complaints related to disability access and assistance. These incidents highlight the range of issues around state and federal laws on disability access to voting, including polling place accessibility and personal assistance. Florida experienced not only uneven application of these laws, but some counties also seemed unprepared to deal with the long lines that occurred during early voting. With the long lines, EP volunteers received many reports related to the elderly and disabled leaving lines because they could not stand for long periods of time.

Criminal Status Related Problems: EP volunteers answered questions related to criminal status. There were voters with felony convictions who were unsure about their eligibility status, and those who had never been convicted of a felony who were identified as ineligible to vote. People were further confused because of efforts over the summer by the State of Florida to purge voter rolls of felons from a flawed felon list.

Student Status Related Problems: EP volunteers answered questions related to student status. Those helped were students with questions about registration and those having problems at the polling places. Below is a particularly troubling example of the kinds of complaints EP volunteers received:

- University of Southern Florida and University of Tampa college students were turned away at the polling place and denied provisional ballots. [Hillsborough]

Insufficient Number of Ballots: Voters reported insufficient provisional ballots in Hillsborough, Miami-Dade and Brevard County

Language Issues: EP volunteers received complaints about lack of assistance for voters with limited English skills.

Long Lines: EP volunteers received complaints about long lines. Long lines were evident in Florida from the start of early voting through Election Day. Of particular concern were reports of elderly and disabled voters waiting in long lines during hot weather and a lack of clarity on the part of poll workers about special accommodations that could be made for these voters. Many of the long lines appeared to be associated with inadequate or malfunctioning electronic voting machines and poll workers were not properly trained to address the problems.

Late Opening and Early Closing: EP volunteers received reports of polls opening late or closing early. We received reports during early voting and on Election Day. Fortunately, late poll openings did not appear to be widespread in Florida during the general election.

Polling Place Problems: EP volunteers helped voters with problems that arose at the polling place. There were voters who were trying to exercise their legal rights outside of polling places, or were concerned about paraphernalia and other materials near or within the polling places. This category also includes issues with polling places with multiple precincts with insufficient or no signage, and polling place canvassers.

Other Issues: Voters had other unique questions that did not directly fit into any of the above categories, including voters needing rides to the polls, voters not being allowed off work to vote, and employers encouraging voters to vote for one candidate over another.

Ohio Election Protection At-a-Glance

Ohio Summary

Election Protection's "Election Incident Reporting System" contains reports of election problems in counties across Ohio. As of November 24, 2004, the majority of reports were from voters, volunteers, and even some election officials in the following counties, in descending order of number of complaints received:

- Cuyahoga
- Franklin
- Hamilton
- Lucas
- Summit

Based on the EIRS database, voting problems encountered in Ohio included:

- Improper requests for, and non-uniform acceptance of, identification;
- Improper instructions on when to offer a provisional ballot;
- Long lines due in part to poorly trained poll workers, inadequate staffing or machines;
- Long-time voters showing up at the polls and finding themselves no longer listed;
- Non-uniform procedures for handling voter who requested, but did not receive, absentee ballots; and
- Inequitable distribution of voting materials (ballots or machines).

Pre-Election Day Legal Activities

Members of the Election Protection coalition and the Ohio Voter Protection Coalition met with election officials in all of our target counties prior to the Election Day to identify potential problems and were successful in resolving some issues that could have disenfranchised voters. Examples of such pre-election advocacy include:

- Preventing widespread challenges at the polling places through aggressive legal advocacy;
- Reversal of the state directive requiring voter registration applications be printed on 80 lb. paperweight;

- A state directive to county Boards of Elections to accept voter registration applications if the eligible voter did not check a simple box on the application;

- State instructions to county Boards of Elections to provide regular ballots to first-time voters who did not provide identification before voting in-person on Election Day if they could provide it then or give the last four digits of their social security number;

- Reversal of a state directive refusing to allow voters who requested absentee ballots, including many who never received their ballots, to cast a provisional ballot at their polling place.

Summary of Complaints and Questions in the State

Below is a sampling of the types of questions and complaints recorded in the EIRS database from voters and volunteers in Ohio.

Absentee Ballot Problems: EP volunteers helped voters with questions and complaints regarding the use of absentee ballots. Most often, individuals who had requested such ballots never received them or received them too late to send in to the county on time. Others reported receiving ballots they never requested. Below are some particularly troubling examples of the kinds of complaints EP volunteers received:

- A voter had requested an absentee ballot, but never received it. When the voter's mother went to the polling place, she was told that her daughter's absentee ballot had been received. The voter's mother told poll workers that this was impossible. [Hamilton]

- A voter who waited in line for over two hours was told that he had already voted absentee, but he said he did not. [Franklin]

- A voter requested an absentee ballot that arrived on November 1. The voter is in school several hundred miles away from the place where she is registered and was not able to deliver the ballot on time. [Hamilton]

Voter Registration Problems and Questions: EP volunteers helped voters with problems related to voter registration. Individuals frequently reported having "disappeared" from the voter rolls. Others had questions regarding how to register, how to determine if they were registered, and what to do if they had moved. Many individuals expressed concerns that they had registered but never received confirmation or were not listed on the voter rolls at their precincts.

Voter Intimidation/Suppression: EP volunteers received complaints about suspected voter intimidation or unusual election-related activities. Some voters reported being intimidated – and deterred from voting or from requesting assistance – by the presence of poll challengers. Other voters reported poll workers engaging in questionable practices, such as one poll worker who only asked African-American voters for their ID or another poll worker who called the police when an individual attempted to help a disabled voter cast his vote. Other voters reported misinformation campaigns. Below are some particularly troubling examples of the kinds of complaints EP volunteers received:

- A voter reported that someone was going door-to-door telling people they were not registered to vote. [Summit]

- A voter in Franklin County received information purporting to be from the county alerting him that since he moved, he would have to vote by provisional ballot. The voter had not moved and had lived at the address for 10-15 years [Franklin]

Provisional Ballot Problems: EP volunteers received complaints about provisional ballots from voters, many of whom reported being denied the opportunity to vote by provisional ballot. Some polling places either ran out of provisional ballots or never had any at their location. For example:

- A voter registered to vote in September. When she went to the polling place on Election Day, they said she was not registered and refused to give her a provisional ballot [Cuyahoga]

Voting Machine Problems: EP volunteers received reports about problems with voting machines, particularly in Cuyahoga and Franklin counties. There were multiple polling locations with an inadequate number of voting machines and/or with broken machines, which led to long lines and frustration for voters and poll workers alike. EP volunteers also received reports of machines not correctly recording votes. Below are particularly troubling examples of the kinds of complaints reported:

- A voter reported "Every time I tried to vote for the Democratic Party Presidential vote the machine went blank. I had to keep trying, it took 5 tries." [Mahoning]

- One entire polling place in Cuyahoga County had to "shut down" at 9:25am on Election Day because there were no working machines. It is unclear whether this polling place ever re-opened.

Disabled Access and Assistance Problems: EP volunteers received questions and complaints related to disability access and assistance. Voters asked EP volunteers how they could vote if they were disabled. Other voters reported problems, including

polling places inaccessible to voters in wheelchairs and poll workers who did not allow disabled voters to receive assistance.

Criminal Status Related Problems: EP volunteers answered questions related to criminal status. Most of these individuals wanted to know what the eligibility requirements were to have their voting rights restored after being convicted of a felony.

Ballot Related Problems: Voters contacted EP volunteers regarding ballot problems. Most of these problems were related to poll workers handling ballots improperly, for example by failing to seal the ballot envelope or failing to place them in the voting box.

Language Issues: EP volunteers received complaints about lack of accessibility for voters with limited English skills.

Long Lines: EP volunteers received complaints, especially from voters in Cuyahoga and Franklin counties, about long lines, some as long as 3-4 hours. The problem appeared to be caused by an insufficient number of voting booths for the record number of voters who turned out.

Polling Place Problems: EP volunteers helped voters with problems that arose at the polling place. In some cases, voters needed help identifying their proper polling location, and in other cases voters could not find their polling place due to inadequate signage. EP volunteers also received reports from voters who had witnessed improper polling place procedures.

- Some voters who were in line to vote, but outside of the doors to the polling place, were sent home at 7:30 when the polls closed. [Franklin]

Pennsylvania Election Protection At-a-Glance

Pennsylvania Summary

Election Protection's "Election Incident Reporting System" contains reports of election problems in counties across Pennsylvania. As of November 24, 2004, the majority of reports were from voters, volunteers, and even some election officials in the following counties, in descending order of number of complaints received:

- Philadelphia
- Allegheny
- Montgomery
- Delaware
- Berks
- Lehigh
- Dauphin

Based on the complaints in the EIRS database, voting problems in Pennsylvania included:

- An inability to get absentee ballots to voters on time;
- Problems with voter registration in general, or with the state's voter registration rolls;
- Failure of poll workers to distribute or understand the legal issues regarding provisional ballots; and
- Problems with malfunctioning or broken voting machines.

Pre-Election Day Legal Activities

Leading up to Election Day, critical decisions were made by the legislature, the courts, Secretary of State Pedro Cortés and county Supervisors of Elections that had a significant effect upon the vote. These decisions included:

- On October 7, 2004 the legislature passed and the Governor signed SB 346 and SB 1222. SB 346 provided for a uniform statewide recount procedure, codified the requirement that a voter must cast a provisional ballot in the correct county for the ballot to be counted, and increased penalties for election workers who engage in willful voter fraud. SB 1222 gave force of law to standards promulgated on August 2, 2003 for what constituted a valid vote on ballots used in Pennsylvania.

- Federal law requires that polling places be accessible to elderly and physically disabled voters. If a polling place is not accessible, state and county governments are required to provide an alternative accessible means of casting a ballot. In September, in anticipation that many Pennsylvania polling places would not be accessible on Election Day, Secretary of State Cortés issued a directive for counties to provide at least one accessible site in the county where disabled voters could go to cast a ballot if they could not access their polling place.

- On October 22nd, the State Supreme Court of Pennsylvania affirmed a lower court ruling that Ralph Nader was not eligible to be listed on Pennsylvania ballots as a candidate for president. The lateness of this decision caused considerable problems with the issuance of absentee ballots. Many Pennsylvania counties waited until the decision to begin sending ballots. Because the deadline under Pennsylvania law for voters to return their absentee ballot was 5pm on October 29, there was a very small window for voters in those counties to return their ballots and have them counted for anything other than the Presidential race (for which there was a later deadline per federal law). Other counties mailed absentee ballots before a final decision – usually with Mr. Nader's name listed on the ballot. Because Mr. Nader was ultimately disqualified, residents of those counties who voted for Mr. Nader had their Presidential vote, in effect, thrown out.

Summary of Complaints and Questions in the State

Below is a sampling of the types of questions and complaints recorded in the EIRS database from voters and volunteers in Pennsylvania.

Absentee Ballot Problems: EP volunteers helped voters with questions and complaints regarding the use of absentee ballots, mostly from voters who had requested such ballots but had never received them. Other voters reported receiving them too late in order to submit them before the deadline. Below is an example of the kinds of complaints EP volunteers received:

- A Pennsylvania voter working in Maryland reported that her county board had refused to "overnight" an absentee ballot to her when one still had not arrived just days before the election. Despite her offer to pay for Federal Express to deliver the ballot, the county refused, and she did not get her ballot until 9:30 p.m. the day it was due. She then had to take time off from work in order to drive back to Pennsylvania and cast her vote. [Allegheny]

Voter Registration Problems and Questions: EP volunteers helped voters with problems related to voter registration. Many voters complained that they had registered but never received their registration cards, or were informed that they were not on the rolls when they went to vote. In some cases, this related to voters who had updated their registrations after moving, while others had been voting at the same place, or had been registered at the same address, for years. Below is an example of the kinds of complaints EP volunteers received:

- A voter sent in her voter registration months earlier when she changed addresses, and even received a confirmation letter from her old county informing her that she was no longer registered. However, she never received a voter registration card from her new county, and when she called her local board of elections, an election official told her that she was not on their list but to simply keep calling back. As Election Day approached, she still had not received confirmation of her registration. [Delaware]

Voter Intimidation/Suppression: EP volunteers received complaints about suspected voter intimidation or unusual election-related activities, including allegations of harassment by election observers and poll workers. Below are some particularly troubling examples of the kinds of complaints EP volunteers received:

- A voter complained that a poll judge looked into the booth to "check and make sure people are doing it correctly." When the voter asked the judge not to do so, the judge made her leave without voting. Caller then got a police officer to escort her in and force the judge to allow her to vote. The judge was then rude to the police officer as well. [Philadelphia]

- An EP volunteer reported 3 separate incidents of a large SUV with white men parked in front of the polling site, idling & staring down voters and pretending to be from District Attorney's. When the EP volunteer confronted them, they admitted they were in fact republican attorneys from Tennessee. [Philadelphia]

- A voter reported that flyers were being passed out to University of Pennsylvania and Temple students saying that if they voted today, their financial aid would be in jeopardy. [Philadelphia]

- An individual reportedly observed people going around a neighborhood and handing out fake ballots – telling people that they no longer need to go to the polls on Election Day. [Philadelphia]

- One voter reported being told by a county election worker that if she had not voted within the previous year, then she would not be allowed to vote in the November election. [Dauphin]

Provisional Ballot Problems: EP volunteers received complaints about provisional ballots from voters, many of whom reported being denied the opportunity to vote by provisional ballot. In conjunction with the difficulties that a large number of voters faced regarding their registration, many also faced difficulties in obtaining provisional ballots when they were told that their names did not appear on the registration rolls. In other cases, provisional ballots were not treated properly. Other voters reported being told that supplies were insufficient, or that the provisional ballots would not count. Below are some examples of the kinds of complaints EP volunteers received:

- A voter had changed her name and address and re-registered to vote. However, when she went to her polling place, she was informed by an election official that she was not on the registration roll at either her old or new polling place. The official told her that the polling place did not have any provisional ballots to give her. [Allegheny]

- When a voter went to her polling place, she was told that her name was not on the registration roll. She then requested a provisional ballot but made a mistake when filling it out. When she tried to return the ballot in exchange for a new one, she was denied because the polling place did not have enough provisional ballots. She was told to simply correct her mistake on the ballot and initial it. [Allegheny]

Voting Machine Problems: EP volunteers received reports about problems with voting machines – including voting machines malfunctioning or being out of service on Election Day. Below is a particularly troubling example of the kinds of complaints EP volunteers received:

- A report came in of voting machines that were preventing people from casting votes for candidates from different parties. The malfunction reportedly required voters to vote on straight party tickets. Poll workers were trying to separate out Democratic and Republican voters before they entered the booth. [Delaware]

Identification Problems: EP volunteers helped voters with problems and questions related to identification requirements, with many reporting that they were required to show ID unnecessarily. Below is a particularly troubling example of the kinds of complaints EP volunteers received:

- A report came in that poll workers were asking African American voters for ID – even though they were not first time voters – but were not requiring ID from white voters. [Lancaster]

Disabled Access and Assistance Problems: EP volunteers received questions and complaints related to disability access and assistance. Many reports came in regarding lack of accessibility, including many complaints of polling places that weren't accessible to wheelchair-bound voters. Below is a particularly troubling example of the kinds of complaints EP volunteers received:

- One individual reportedly witnessed an election official refusing a wheelchair bound woman's request to have her daughter help her vote. Allegedly, the official told the woman she had to get up out of her wheelchair in the booth and vote herself. [Delaware]

Language Issues: EP volunteers received complaints about lack of assistance for voters with limited English skills. Voters reported problems with getting properly translated voting materials or assistance at the polls.

Long Lines: EP volunteers received complaints about long lines. The problem appeared to be caused by an insufficient number of voting booths for the number of voters who turned out.

Arizona Election Protection At-a-Glance

Arizona Summary

Election Protection's "Election Incident Reporting System" contains reports of election problems in counties across Arizona. As of November 24, 2004, the majority of reports were from voters, volunteers, and even some election officials in the following counties, in descending order of number of complaints received:

- Maricopa
- Pima
- Yavapai

Based on the EIRS database, voting problems encountered in Arizona included:

- Inability to get absentee ballots;
- Problems with registration; and
- Incidents of voter intimidation.

Summary of Complaints and Questions in the State

Below is a sampling of the types of questions and complaints recorded in the EIRS database from voters and volunteers in Arizona.

Absentee Ballot Problems: EP volunteers helped voters with questions and complaints regarding the use of absentee ballots. Several voters reported having received inadequate or confusing instructions as to how the ballots should be marked or how much postage should be applied. Others reported being mistakenly marked as absentee voters at the polls or encountering trouble when attempting to vote at the polls after having requested an absentee ballot. Below are some particularly troubling examples of the kinds of complaints EP volunteers received:

- A voter reported that, when he went to vote on Election Day, he was informed that he had requested an absentee ballot. He denied ever doing so and was told that if he wanted to vote, he would have to do so via provisional ballot. The EP hotline received several calls of this type [Pima; Maricopa]
- A voter reported that she had received an absentee ballot but preferred to vote in person on Election Day. She was informed by an election official that she could bring the ballot to her polling place and "spoil" it in person and then cast her vote. She reported that when she arrived at her polling place, an election official

handed her a provisional ballot and didn't take her absentee ballot, saying, "we don't care" and telling her to keep it. [Pima]

Voter Registration Problems and Questions: EP volunteers helped voters with problems related to voter registration. Several voters reported finding that they weren't on the rolls after having registered through outside registration efforts not run by county election officials. Others reported being removed from the rolls when they had not requested registration changes or removals. Below are some troubling examples of the kinds of complaints EP volunteers received:

- A voter reported that he arrived at the polling place he has used for the last 12 years and was told that his name was not listed on the rolls. He noted that his son, who had moved out of state and reregistered elsewhere, was still listed as registered to vote in that county. The voter suspected that election officials had mistakenly removed him from the rolls instead of his son. He was denied a regular ballot, and had to vote via a provisional ballot. [Maricopa]

- A woman reported having filled out voter registration forms with her husband in September at a rally where Elizabeth Edwards spoke. When she contacted the County, she was told that there was no record of either of them registering to vote. The woman reported that one of the individuals with whom she spoke asked her how she had registered and when she told him she was told "that's no big loss- you registered for the wrong party anyway." [Maricopa]

Voter Intimidation/Suppression: EP volunteers received complaints about suspected voter intimidation or unusual election-related activities. Intimidation tactics included questioning citizenship, and several reports came in of apparent attempts at suppressing the Latino vote. Below are some particularly troubling examples of the kinds of complaints EP volunteers received:

- A voter reported that an individual was traveling to various polling places and confronting minority voters and asking them if they were citizens. He was asking to see their ID and had a cameraman with him who filmed the encounters. The individual wore a black tee shirt with "US Constitution Enforcer" written on it and a military style belt that gave the appearance that he was armed. [Pima]

- A complainant reported that a poll watcher affiliated with the National Council of La Raza entered a polling place in order to make sure that Spanish language ballots were available. An election official reportedly claimed that he didn't have time to tell him and asked what gave him the authority to ask. The two got into

a heated exchange and when the NCLR member left, the election official allegedly complained that he had "all these damned Mexicans lining up to vote and that they were taking away all of our rights." [Pima]

Provisional Ballot Problems: EP volunteers received complaints about provisional ballots from voters, many of whom reported being denied the opportunity to vote by provisional ballot. Most often, otherwise eligible voters were forced to accept provisional ballots without their status or claims of eligibility being investigated further. Many voters also reported being very uneasy with provisional ballots after claims were repeatedly made by officials that they were not likely to be counted. Below are some examples of the kinds of complaints EP volunteers received:

- A voter registered to vote and had a receipt along with a confirmation number for registering. When she went to vote, she was told that she was not on the registry but could cast a provisional ballot, although she was told that it "probably wouldn't count." [Maricopa]

- A voter reported not appearing on the registration rolls, even though she had registered. She was sure that she was in the correct precinct, but rather than seeking to verify her correct precinct, the poll workers simply told her to cast a provisional ballot. She feared this would nullify her vote if she was in fact in the wrong precinct. [Pima]

Voting Machine Problems: EP volunteers received reports about problems with voting machines. Most reports detailed problems with optical scanning machines that rejected or failed to read ballots or were simply not working.

Identification Problems: EP volunteers helped voters with problems and questions related to identification requirements. Many voters complained that they were asked to show ID when they thought it was unnecessary or were unable to vote because they lacked proper ID.

Language Issues: EP volunteers received complaints about lack of accessibility for voters with limited English skills. Most often, the reports regarded a lack of Spanish-language election materials, poll workers or translators.

Long Lines: EP volunteers received complaints about long lines – in some cases entailing a 3-4 hour wait. The problem appeared to be caused by an insufficient number of voting booths for the number of voters who turned out.

Other Problems: Voters had other unique questions that did not directly fit into any of the above categories. For example:

- Several reports came in of voters being told that they were not allowed to enter their polling places while carrying the EP-issued "Voter's Bill of Rights." [Maricopa; Pima]

Illinois Election Protection At-a-Glance

Illinois Summary

Election Protection's "Election Incident Reporting System" contains reports of election problems in counties across Illinois. As of November 24, 2004, the majority of reports were from voters, volunteers, and even some election officials in the following counties, in descending order of number of complaints received:

- Cook County
- Du Page County
- Will County
- Kane County
- Lake County

Based on the EIRS database, voting problems encountered in Illinois included:

- Absentee ballot related problems;
- Registration problems;
- Machine problems;
- Identification problems
- Intimidation; and
- General Ballot problems.

Summary of Complaints in the State

Below is a sampling of the types of questions and complaints recorded in the EIRS database from voters and volunteers in Illinois.

Absentee Ballot Problems: EP volunteers helped voters with questions and complaints regarding the use of absentee ballots. In several cases, voters – mainly college students – requested absentee ballots, but they never received the ballots, at least not in time to vote in this election. Below are some examples of the kinds of complaints EP volunteers received:

- A voter reported that she and other university students had applied for absentee ballots but never received them. The voter called the Cook County Clerk on Oct. 31, Nov 1 and Nov 2. The voter was instructed that voting in Chicago was the only possibility. The voter was unable to return home in time. [Cook]

- A voter registered in Cook County, Dec. 2003. The voter is in college now and too far away from home, so voter mailed an application for an absentee ballot. Confirmation was delivered by Oct. 25, 2004. On Oct. 28th the voter called the Cook County Clerk's office, but the office said that it had not received the application. [Cook]

Voter Registration Problems and Questions: EP volunteers helped voters with problems related to voter registration. Most problems involved voters who had registered to vote, either through an organization or through other means, but who never received their voter registration card and so were not sure if they could vote or where to go to vote. In some cases, these voters sought registration verification assistance from EP volunteers; in other cases, voters went to vote and were told they were not registered. Other voters had problems that arose from having moved or changed their name since the last election.

Voter Intimidation/Suppression: EP volunteers received complaints about suspected voter intimidation or unusual election-related activities. These problems were evident in Cook County and elsewhere in Illinois. Voters reported several incidents involving police officers who were at the polls asking for ID, among other things. Voters also reported poll workers giving out misinformation or following suspect procedures. Below are some particularly troubling examples of the kinds of complaints EP volunteers received:

- A police officer outside the polling center (1) asked for photo ID and (2) told voters that they could not vote if they had ever been convicted of a felony. [Cook]

- A voter reported that election officials told him he was able to vote for the president, but that there was no need to vote for judges at the local judicial level. He said the same thing happened to his daughter. [Kane]

- A white poll worker reportedly said to a line of all-black voters: ""I was having a pleasant day until you all walked in."" The election official couldn't find their names on the list. They waited approximately 30 minutes. [Cook]

Provisional Ballot Problems: EP volunteers received complaints about provisional ballots from voters, many of whom reported being denied the opportunity to vote by provisional ballot. In some cases, poll workers would not give individuals provisional ballots because their name did not appear on the voting rolls, even though the voters claimed to have registered. In another case, a Cook County poll worker told a man that everyone who voted by provisional ballot had to go to the Board of Elections within 48 hours and show ID, even if they also showed ID when voting.

Voting Machine Problems: EP volunteers received reports about problems with

voting machines, including machines malfunctioning or not working at all. Some voters reported machines not being able to read ballots and the ballots being placed in "a box." Other voters had problems with machines that either indicated an "overvote" or an "undervote." In several of these cases, voters stated that even if the machine initially indicated an "undervote," the vote was still cast, meaning that they were only able to cast incomplete votes.

Identification Problems: EP volunteers helped voters with problems and questions related to identification requirements. The major issues were voters not having a current address on their driver's license and poll workers asking all voters to present two forms of ID. In several cases, when voters could not produce the ID, they were not allowed to vote. Below are some examples of the kinds of complaints EP volunteers received:

- A voter was told he could not vote (even provisionally) because his driver's license lists his old address. He is properly registered at his new address, but living with parents, so he has no utility bills in his name. He pays bank, credit card and cell phone bills online. [Cook]

- A voter was asked for two forms of ID and was informed that if she hadn't voted in March, her vote would be contested. [Cook]

Disabled Access and Assistance Problems: EP volunteers received questions and complaints related to disability access and assistance. Some voters reported polling places that were not accessible to wheelchairs. Others reported encountering problems when they tried to get assistance. Below is a particularly troubling example of the kinds of complaints EP volunteers received:

- A daughter expressed concerns on behalf of her parents. The father had cataracts and could not see well. The poll worker stopped his wife from helping him, saying "Middle Eastern men force their women to vote in a particular way" and it was "against the rules; you can't help people out like that." The parents had always helped each other vote in the past [Cook]

Ballot Related Problems: Voters contacted EP volunteers regarding ballot problems. One polling place ran out of ballots, and the poll workers told voters to go home. Some voters were given an incorrect ballot that did not list the candidates for local offices. Some voters had trouble punching all of the way through their ballots, which poll workers told them not to worry about. Other voters expressed concerns about abnormalities that they feared would prevent their ballots from being counted. Below are some examples of the kinds of complaints EP volunteers received:

- One voter reported that her ballot was rejected as "spoiled" twice; she was concerned that her vote won't count. This was a punch card ballot. The voter had to go because she was late for work.

Also, the person in front of and behind her had similar problems. [Cook]

- A voter, who was one of the first people in line, reported ballot concerns. When his ballot was placed into the machine, it came out as "damaged." They gave him another ballot with the same result. Every person after him had the same problem. The poll workers put the ballots in a cardboard box. [Cook]

Long Lines: EP volunteers received complaints about long lines. The problem appeared to be caused by an insufficient number of voting booths for the number of voters who turned out. Some voters experienced long lines due to an insufficient number of poll workers and/or the lack of organization on the part of poll workers. Some voters were not able to wait in long lines and were unable to vote. Below is an example of the kinds of complaints EP volunteers received:

- A voter reported that it took 45 minutes to vote. Only one person was voting at a time even though there were 5 booths. There was one poll worker doing everything: checking names and monitoring. Four other workers at the polling place were not doing anything. [Cook]

Michigan Election Protection At-a-Glance

Michigan Summary

Election Protection's "Election Incident Reporting System" contains reports of election problems in counties across Michigan. As of November 24, 2004, the majority of reports were from voters, volunteers, and even some election officials in the following counties, in descending order of number of complaints received:

- Wayne
- Oakland
- Genesee

Based on the EIRS database, voting problems encountered in Michigan included:

- Failure to properly process registration applications;
- Long lines due in part to inadequate staffing;
- Machine failures;
- Voter intimidation and misinformation campaigns;
- Improper instructions on when to offer a provisional ballot; and
- Election official failures to deliver absentee ballots to voters who requested them and confusion about what to do for those who had not received them.

Summary of Complaints and Questions in the State

Below is a sampling of the types of questions and complaints recorded in the EIRS database from voters and volunteers in Michigan.

Absentee Ballot Problems: EP volunteers helped voters with questions and complaints regarding the use of absentee ballots. There were voters who had problems when they requested absentee ballots, voters who did not receive absentee ballots in time to vote or at all, and even those who discovered that their absentee ballot had been returned by someone else. Below are some examples of the kinds of complaints EP volunteers received:

- A voter's mother requested an absentee ballot in October on behalf of her son in the military (Coast Guard). Each time she requested a ballot she was told the request was not received. The son understood that he could not vote, but was outraged. [Wayne]

- A voter requested an absentee ballot 3-4 weeks ago before the election, but didn't receive it in Kentucky until 11/1 (postmarked 10/27). The Board of Elections informed her that the ballot would not count if not received by 10 PM on Election night. [Saginaw]

Voter Registration Problems and Questions: EP volunteers helped voters with problems related to voter registration. There were voters who thought they had registered but had not received cards in the mail, and voters who were not included on the list of registered voters. Many of the registration problems were reports from voters who had moved and were unclear about their registration status and proper polling place. There were also reports about voters registering with third party organizations who never received their registration cards.

Voter Intimidation/Suppression: EP volunteers received complaints about suspected voter intimidation or unusual election-related activities. Some voters reported being intimidated – and deterred from voting or from requesting assistance – by the presence of poll challengers. Below are some particularly troubling examples of the kinds of complaints EP volunteers received:

- One Republican poll challenger was reported by several voters to be intimidating poll workers and voters by standing too close to poll workers, writing down things and calling out on his phone. He was described as very aggressive in his actions. Voters called police who threatened to arrest challenger, but he chose to leave at that point. [Wayne]

- Republican challengers were physically blocking access to polls with cars and bodies. [Kalamazoo]

- Reports came in of intimidation from police offices at polling places. [Wayne]

- A notice was hung on the front door of a voter's home advising "Your polling place is: Garfield Edison School, Ward 3, Precinct 17, 301 E McClellan." Voter realized this was misinformation and went to Doyle Ryder School to vote because for years he has voted at precinct 32". [Genesee]

Provisional Ballot Problems: EP volunteers received complaints about provisional ballots from voters, many of whom reported being denied the opportunity to vote by provisional ballot. Complaints and inquiries came in about poll workers unevenly applying or not understanding the new provisional ballot requirements. In some instances, voters requested provisional ballots and poll workers refused to provide them or provided them and then told the voter that "they wouldn't count anyway." Below are some particularly troubling examples of the kinds of complaints EP volunteers received:

- It was reported that in one polling place the voter list was not complete, but ended at the letter s. Thus, all the people whose names began with T-Z had to use provisional ballots. [Wayne]

- A voter's registration could not be found. The poll worker said that the ballot would not count if the voter could not provide the exact date of registration. [Oakland]

Voting Machine Problems: EP volunteers received reports about problems with voting machines. Reports came in regarding machines not working properly, ballots being improperly handled or possibly not counted at all, or complete malfunctions voting machines at polling places. In a few instances, polling places opened late when the machines were not working properly. Below are some particularly troubling examples of the kinds of complaints EP volunteers received:

- A first time voter was denied the opportunity to vote. He had difficulty with the lever used to close the booth and when he asked a question, he was told to use the lever to close it. However, closing it caused him to cast a blank ballot. Then he was told to leave because there were no provisions for his mistakes. [Warren]

- A voter complained about a jammed voting machine scanner. She said poll workers instructed her to drop her ballot into a bin with those that were already scanned. They were told they could wait until the repair person came but they had already waited over 1 hour and 20 minutes. [Oakland]

- A voter reported that a Scantron tabulator was broken and people were getting ballots & voting but votes were not being counted on site. Poll workers told EP volunteers they would count the votes later. Scantron was down for 2 hrs. [Wayne]

- Election Protection worker reported that when the optical scan receptacle for taking the ballots jammed, the election judge came to the front of the building and announced "polls closed." The EP volunteer called city clerk's office, but no additional help was available. [Genesee]

Identification Problems: EP volunteers helped voters with problems and questions related to identification requirements. Complaints came in from voters who found poll workers misapplying identification procedures and turning voters away who met the state's identification procedures.

Disabled Access and Assistance Problems: EP volunteers received questions and complaints related to disability access and assistance. The issues of disability access were primarily related to polling places that could not accommodate disabled voters,

either through providing no assistance, or inadequate assistance when it was available at all. Below are some examples of the kinds of complaints EP volunteers received:

- Voter reported that the wheelchair lift was not available for use. Handicapped registrants had to be carried up a set of stairs to reach the polling location. Although a key was found for the lift, it would not work. [Wayne]

- EP volunteers assisted a woman in a wheelchair up 2 flights of stairs to vote. [Wayne]

Criminal Status Related Problems: EP volunteers answered questions related to criminal status. Reports came in from people with felony convictions unsure about whether they were eligible to vote. Because Michigan election law allows ex-offenders to vote while on probation, there was confusion over whether those recently released could vote.

Student Status Related Problems: EP volunteers answered questions related to student status. There were complaints about student registration issues and first-time student voters being denied the right to vote. There was a lot confusion over the requirement that first-time voters who registered by mail in Michigan must vote in person, and could not vote absentee.

Long Lines: EP volunteers received complaints about long lines, in some instances even before the polls opened on Election Day. Many of the long lines appeared to be associated with the inadequate number or malfunctioning of machines in polling locations where poll workers were not properly trained to address the problems.

Polling Place Problems: EP volunteers helped voters with problems that arose at the polling place. There were voters who had questions about where to vote and voters who reported that their polling places had been changed, despite having a voter registration card with another polling place location indicated. We received reports from voters who were forced to wait in multiple lines at polling places to vote because they were originally in the wrong precinct line. A range of other issues included improper procedures by poll workers and improper campaigning near the polling place. Below are some particularly troubling examples of the kinds of complaints EP volunteers received:

- Voter was in line to vote in precinct 6 but was told after waiting in line that she was in the wrong precinct. Voter had to go to the end of the line in precinct 5, then after waiting had to go to the end of the line in precinct 8 after being told she was in the wrong line. The clerks kept telling the voter the wrong precinct. The voter waited in line one and one half hours. [Oakland]

- Voter received a letter stating that she was to vote at Trix Elementary, but officials at Trix told her to vote at Genesis. [Wayne]

- Voter reported that poll worker told voter that she could vote a straight ticket and that she could also vote for an individual candidate of another party, thus spoiling her ballot. [Oakland]

- Poll workers did not stamp the list (book) as voters' applications were matched and accepted. Republican challengers observed this and phoned it in. They remarked that ""this could allow people to vote a second time."" After a DNC volunteer requested for the 4th time that they stamp the book, the workers went through the application slips and stamped the book accordingly. They did not complete the book, however. [Wayne]

- Voters reported that the county clerk phone line was not working to check whether individuals not on the list at the polling place were in the system. Election workers could not get through so voters were forced to vote by provisional ballots. [Wayne]

Other Issues: Voters had other unique questions that did not directly fit into any of the above categories. For example:

- Supervisors were not allowing staff to go vote. Michigan law allows 3 hours to do so. [Taylor]

New Mexico Election Protection At-a-Glance

New Mexico Summary

Election Protection's "Election Incident Reporting System" contains reports of election problems in counties across New Mexico. As of November 24, 2004, the majority of reports were from voters, volunteers, and even some election officials in the following counties, in descending order:

- Bernalillo
- Santa Fe
- Dona Ana
- Rio Arriba

Based on the EIRS database, voting problems encountered in New Mexico included:

- Significant numbers of voters complained about either not receiving an absentee ballot or having received one they did not request;
- Long-time voters who were not on the voter rolls or those who found that their polling place changed;
- Problems with voting machines;
- Confusion over when to vote by provisional ballot; and
- General polling place problems and confusion about basic voting rules.

Summary of Complaints and Questions in the State

Below is a sampling of the types of questions and complaints recorded in the EIRS database from voters and volunteers in New Mexico.

Absentee Ballot Problems: EP volunteers received complaints from voters who did not receive absentee ballots in time to vote or received ballots they did not request. We also received the following reports:

- A voter brought a completed absentee ballot into the polling place to turn in. The poll worker incorrectly told the voter to vote provisionally. The Democratic Party challenger in the polling place told the voter to take the ballot to the county clerk's office. The voter left to do so and according to the EP poll monitor, the poll worker then admitted that that was another option that they should have mentioned. (In fact, NM law states that absentee ballots are to be returned to the county clerk's office and not the polling place.) In other cases absentee ballots were accepted at the polling place

and voters were not told to take those ballots to the county clerk's office. [Bernalillo]

- A first time voter in New Mexico never filed an absentee ballot but was listed as absentee on voter rolls. He was told to vote provisionally by a poll worker. [Santa Fe]

Voter Registration Problems and Questions: EP volunteers received complaints from long time voters and new voters who were not on the voter rolls at their respective polling places.

Voting Machine Problems: EP volunteers received reports about machines malfunctioning. While several of the voters, in the end, were able to vote they still expressed concerns that their vote would not count and that other voters would not notice the problems.

- A voter reported that he used an electronic voting machine, and after selecting a Democratic candidate, noticed that the Republican light actually lit up. He had to select the Democratic candidate again to cancel it out, and then select it again to make the correct selection. He had to do this for almost all the people he voted for. [Bernalillo]

- An EP volunteer reported that while he was helping an elderly man with voting he witnessed that when the Democrat Presidential candidate was selected, the Libertarian candidate would be highlighted. The poll worker instructed on how to correct and the vote was corrected, but the same irregularities were reported in other area precincts during early voting with touch screens. [Bernalillo]

Provisional Ballot Problems: EP volunteers helped numerous voters who were having problems voting by provisional ballot. These incidents range from inquiries into the provisional ballot system to workers unevenly applying or not understanding the new provisional ballot requirements. Most of the calls came from Bernalillo County.

- County Clerk's office was treating emergency paper ballot and provisional ballot the same way. This was an issue with people who wanted absentee ballots and did not receive one. [Santa Fe]

- There were insufficient provisional ballots all day long, lack of affidavits and envelopes at one polling place. [Rio Arriba]

Wisconsin Election Protection At-a-Glance

Wisconsin Summary

Election Protection's "Election Incident Reporting System" contained reports of election problems from across Wisconsin. As of November 24, 2004, the majority of reports were from voters and volunteers in the following counties, in descending order of number of complaints received:

- Milwaukee
- Dane
- Racine
- Waukesha
- Kenosha

Based on the complaints in the EIRS database, voting problems encountered in Wisconsin included:

- Voter intimidation or suppression;
- Failures to deliver absentee ballots to voters who requested them;
- Access for voters with disabilities;
- Voting machine errors; and
- Inadequate staffing of polling places, which, in many cases, led to long lines.

Summary of Complaints and Questions in the State

Below is a sampling of the types of questions and complaints recorded in the EIRS database from voters in Wisconsin.

Absentee Ballot Problems: EP volunteers helped voters with questions about obtaining absentee ballots. Also, EP volunteers received complaints regarding absentee ballots, most often from individuals who had requested an absentee ballot but never received one or did not receive one in time to return it by Election Day. One Milwaukee voter reported having received three absentee ballots in the mail.

Voter Registration Problems and Questions: EP volunteers helped individuals with questions or problems related to registering to vote. Many voters reported that they had not received confirmation of their registration. Since Wisconsin allows same-day voter registration, many of these issues were easily resolved as voters were allowed to register on Election Day.

Voter Intimidation/Suppression: EP volunteers received complaints about suspected voter intimidation or unusual election-related activities. Some voters reported being intimidated – and deterred from voting or from requesting assistance – by the presence of poll challengers. Other voters reported poll workers engaging in

questionable practices. Other voters reported misinformation campaigns. Below are some particularly troubling examples of the kinds of complaints EP volunteers received:

- A voter claimed that a police officer entered a polling location and announced that he would arrest anyone who had an outstanding warrant. An attorney informed the officer that such action was illegal and the officer reportedly responded that he knew it was, but thought it was a good idea anyway. [Rock]

- One individual reported that her sister, who is on W-2, was told by her case manager that if she voted for John Kerry, she would stop receiving her checks. [Milwaukee]

- Individuals reported seeing flyers, purportedly from an organization called the Milwaukee Black Voters League, posted in minority districts warning residents that if they had already voted this year, they cannot vote in the presidential election; that anyone convicted of any offense, however minor, is ineligible to vote; that any family member having been convicted of anything would disqualify a voter; and that any violation of these warnings would result in ten years in prison and a voter's children being taken away. [Milwaukee]

- A voter reported hearing that people were being told that they could not vote if they had outstanding parking tickets. [Milwaukee]

Disabled Access and Assistance Problems: EP volunteers answered Wisconsin voters' questions regarding their rights to assistance and curbside voting at the polls. EP volunteers also received some complaints related to polling place access for those with disabilities.

Long Lines: EP volunteers received complaints about long lines. Many polling places were understaffed, leading to waits as long as 3 hours for some voters.

Voting Machine Problems: Some voters reported that voting machines were either not working or malfunctioning.

- One EP volunteer reported a discrepancy between a ward's machine vote totals and the ward's count of actual votes. The machine had recorded 982 votes, while the ward books showed 971 votes. [Milwaukee]

- Voters reported ballot-counting machines' counters not advancing when a new ballot was passed through the machine. [Milwaukee]

Colorado Election Protection At-a-Glance

Colorado Summary

Election Protection's "Election Incident Reporting System" contains reports of election problems in counties across Colorado. As of November 24, 2004, the majority of reports were from voters, volunteers, and even some election officials in the following counties, in descending order of number of complaints received:

- Denver
- El Paso
- Adams
- Pueblo
- Jefferson
- Arapahoe
- Boulder

Based on the EIRS database, voting problems encountered in Colorado included:

- Registration related problems;
- Lack of education about identification requirements;
- Confusion about how to implement provisional ballot requirements;
- Poll workers who are, at best untrained, and at worst, actively dissuading voters from casting votes;
- Voter confusion caused by multiple precincts being located at one polling place.

Summary of Complaints and Questions in the State

Below is a sampling of the types of questions and complaints recorded in the EIRS database from voters and volunteers in Colorado.

Absentee Ballot Problems: EP volunteers helped voters with questions and complaints regarding the use of absentee ballots. Many reports came in from voters who had not yet received their absentee ballots or received them too late to get them to the County Clerk's office in time to be counted on Election Day. Over half of the absentee ballot related problems came from Denver. Below are some particularly troubling examples of the kinds of complaints EP volunteers received:

- Several Denver County voters received their absentee ballots late as a result of an error on the part of the County. An EP volunteer

spoke to a County official who said that the problem was fixed and that ballots were sent. The official also reported that this error affected approximately 24,000 absentee applications. [Denver]

- A voter in Denver did not receive an absentee ballot and was told by a person at elections office that that was "too bad." [Denver]

Voter Registration Problems and Questions: EP volunteers helped voters with problems related to voter registration. Registration related problems were by far the biggest problem reported in Colorado. Some voters had moved and wondered how they could vote. Many voters reported that they had thought they had registered, but did not receive their cards in the mail. Below are some examples of the kinds of complaints EP volunteers received:

- A voter who moved from Denver County to Arapahoe County tried to vote in his new jurisdiction. The election judge denied him the opportunity to vote. An EP volunteer told the voter to go back in and demand emergency registration. [Arapahoe]

Voter Intimidation/Suppression: EP volunteers received complaints about suspected voter intimidation or unusual election-related activities. Issues here focused primarily on misinformation to voters. Below is a troubling example of the kinds of complaints EP volunteers received:

- Two voters reported similar incidents. Phone messages were left on their machine stating that their polling places had changed. Both voters, one in Adams County and the other in Denver County, knew their polling place and that the calls were false [Adams; Denver]

Provisional Ballot Problems: EP volunteers received complaints about provisional ballots from voters, many of whom reported being denied the opportunity to vote by provisional ballot. As with many of the other states, there was confusion among poll workers in Colorado about the implementation of the provisional ballot provisions in the law. This confusion led to voters either not being allowed to vote by provisional ballot or voters who should have been allowed to vote with regular ballots being given provisional ballots. Below are some particularly troubling examples of the kinds of complaints EP volunteers received:

- In Arapahoe County, EP volunteers received a report that election judges were not giving out provisional ballots. [Arapahoe]

- In Denver at the Catholic Charities polling place, EP volunteers confronted an election judge who was calling the Elections Commission every time someone requested a provisional ballot. EP volunteers told the judge that the law does not require such

phone calls. The election judge became angry, saying that he was told to call the Elections Commission and that if the voters had registered properly in the first place they wouldn't be having these problems. [Denver]

Voting Machine Problems: EP volunteers received reports about problems with voting machines. Colorado has several counties that have some form of electronic voting machines. These machines experienced some problems, including optical scanner machines that did not work and voting machines that broke down. Voters also expressed concerns about the lack of a paper trail that made them feel uncomfortable. Below are some particularly troubling examples of the kinds of complaints EP volunteers received:

- An election judge reported that the computers were down and approximately 150 voters were turned away and told to go to other polling places. The complainant was concerned because many in line were blue collar workers with limited time to vote. They were not offering backup paper ballots or provisional ballots at the time the problem was reported. After over an hour, they went to a paper system and started to let people vote at the polling place again. The computer system that went down was one used for the purpose of finding the voters' name, identifying the type of ballot they should receive and marking them off as having voted. [Larimer]

- A voter attempted to cast a ballot and the machine malfunctioned. When the voter brought the problem to the attention of a poll worker, he tended to the machine in a way that zeroed out the vote. The official said the machine had been acting up all day, but that it was still in service because they only had two machines. They allowed this particular voter to cast a provisional ballot but left the machine in service. When an EP volunteer called the county, the county told our volunteer they would remove and replace the machine, and that a certified technician was coming to do that. [Arapahoe]

Identification Problems: EP volunteers helped voters with problems and questions related to identification requirements. Below is an example of the kinds of complaints EP volunteers received:

- A voter with an expired license was not allowed to vote. EP volunteers gave him the alternative identification he could bring with him, and he was able to go back and vote. [Pueblo]

Disability Access and Assistance Problems: EP volunteers received questions and complaints related to disability access and assistance. Most often, reports detailed a lack of adequate assistance. Some reports detailed that polling places offered no

assistance whatsoever to disabled voters. Below are some particularly troubling examples of the kinds of complaints EP volunteers received:

- A disabled voter had to manage two flights of stairs to get to polling place only to find out that the polling place had been moved to another location. They had previously voted at this location. [Denver]

- A voter brought a disabled voter with him to vote. When they arrived at the polling place, they found that the handicapped entrance was blocked. The voter and poll watcher had to request that the door be opened. (Denver)

Criminal Status Related Problems: EP volunteers answered questions related to criminal status. Colorado law says that if you have served out your felony conviction and any associated parole, and have re-registered, that you may vote. In most cases, individuals wanted to know if they were eligible to vote based on their felony status.

Student Status Related Problems: EP volunteers answered questions related to student status. Colorado's incidents in this area were reported in Boulder and Larimer counties.

Ballot Related Problems: Voters contacted EP volunteers regarding ballot problems. This category of problems includes concerns raised by voters regarding marking procedures and assistance from election judges, as well as ballot supplies. Below are some examples of the kinds of complaints EP volunteers received:

- A report came in that poll workers had pencils out on the table for voters, even though the instructions said to only use pen to fill out the ballots. The poll workers removed the pencils, but the complainant was concerned that voters had already used them and their ballots could be invalidated. [Boulder]

- During early voting, a voter reported going to vote only to find a ballot for his area was not available. The voter was told he could vote by provisional ballot. [Jefferson]

Language Issues: EP volunteers received complaints about lack of assistance for voters with limited English skills. Some jurisdictions in Colorado require that Spanish language ballots be available to those who request them.

Long Lines: EP volunteers received complaints about long lines. The problem appeared to be caused by an insufficient number of voting booths for the number of voters who turned out.

Late Opening and Early Closing: EP volunteers received reports of polls opening late or closing early.

Polling Place Problems: EP volunteers helped voters with problems that arose at the polling place. Some of the polling place problems came from confusion when there were multiple precincts voting at one polling place. Below are some examples of the kinds of complaints EP volunteers received:

- At one polling place in Denver, three separate precincts were voting, but only two elections judges were available. The third judge, for the third precinct, had not shown up. The other two elections judges were left to help the people from the third precinct, creating long lines and additional confusion. [Denver]

- At the Remington Elementary polling place in Denver, the appropriate signage regarding provisional ballots was not posted, so the EP volunteer did it. In addition, the polling place had multiple precincts, but one of the precinct signs had been removed. [Denver]

Other Problems: Voters had other unique questions that did not directly fit into any of the above categories. For example:

- Voters wanted to know the rules around taking time off of work to vote. [Denver]

TIER 2 STATES

Missouri Election Protection At-a-Glance

Missouri Summary

Election Protection's "Election Incident Reporting System" contains reports of election problems in counties across Missouri. As of November 24, 2004, the majority of reports were from voters, volunteers, and even some election officials in Jackson and St. Louis counties.

It appears the following were the major problems encountered in Missouri:

- An inability to get absentee ballots to voters on time;
- Problems with the state's voter registration system and registration rolls;
- Failure of poll workers to distribute provisional ballots or understand the legal issues regarding such ballots;
- Suspected incidents of voter intimidation; and
- Confusion regarding proper voting procedures for punch card ballots.

Summary of Complaints and Questions in the State

Below is a sampling of the types of questions and complaints recorded in the EIRS database from voters and volunteers in Missouri.

Absentee Ballot Problems: EP volunteers helped voters with questions and complaints regarding the use of absentee ballots, mainly from voters who had requested such ballots but never received them. Other voters reported discrepancies between absentee ballot requests and the records kept by the county. Below is an example of the kinds of complaints EP volunteers received:

- A voter arrived at her polling place only to be informed that she had already submitted an absentee ballot, which she had not done. Officials were reportedly encountering this problem frequently, where individuals who had *not* requested absentee ballots were listed as having done so, while people who *had* requested such ballots were listed as not having done so. EP volunteers received multiple reports of this type of problem. [St. Louis]

Voter Registration Problems: EP volunteers helped voters with problems related to voter registration, generally from individuals who had registered but never received a registration card and did not appear on the voter rolls. Others reportedly found errors in their voter file when they went to register to vote. Below are some troubling examples of the kinds of complaints EP volunteers received:

- A Jackson County voter, who has been residing and registered to vote at the same address for 30 years, had problems voting. Even though she has voted consistently over the years and has been called for jury duty at least 8 times, she was turned away when she went to her polling place. She was informed that her name did not appear on the registration rolls. [Jackson]

- A voter's address was listed incorrectly on the registration rolls. Her address was listed as "221" rather than the correct "211" address. She was told that she was therefore unable to vote and was not offered the option of casting a provisional ballot. [Boone]

Voter Intimidation/Suppression: EP volunteers received complaints about suspected voter intimidation or unusual election-related activities. Below are some particularly troubling examples of the kinds of complaints EP volunteers received:

- A report came in of black voters in a predominantly white neighborhood being challenged by Republican challengers who requested proof of ID, residence, and signature. The challengers reportedly did not make similar demands on white voters. At the same polling place, when black voters asked questions of election officials, the officials reportedly refused to answer, telling them "it's very simple," while providing white voters with any requested information or assistance. [St. Louis]

- An individual in Jackson County reported that three men in military-looking uniforms were standing within 25 feet of the entrance to a polling place. They were reportedly making partisan, racist and derogatory statements to voters. The individual complained to an election judge, who went out to see the men, but reportedly took no action. [Jackson]

Provisional Ballot Problems: EP volunteers received complaints about provisional ballots from voters, many of whom reported being denied the opportunity to vote by provisional ballot. Below is a particularly troubling example of the kinds of complaints EP volunteers received:

- Even with appropriate ID, a St. Charles County voter was told that she could not vote without her voter ID# and that the phone number needed to get her ID# was busy, so she could not vote. She

was not offered a provisional ballot. She even reported seeing a sign in the polling place stating that provisional ballots would not be counted. [St. Charles]

Identification Problems: EP volunteers helped voters with problems and questions related to identification requirements, mainly from individuals who had been turned away from the polls for lacking the proper identification.

Disabled Access and Assistance Problems: EP volunteers received questions and complaints related to disability access and assistance. In most cases, EP volunteers talked with individuals seeking assistance for disabled voters, or individuals reporting polling places that were inaccessible to such voters, especially voters in wheelchairs.

Ballot Related Problems: Voters contacted EP volunteers regarding ballot problems. Below is an example of the kinds of concerns EP volunteers heard from voters:

- Several voters from around the state expressed concerns regarding the process for voting via punch card ballots. Voters were confused and wanted to know how, when voting on a straight party line ticket, they were to vote for individual candidates, such as those running for nonpartisan positions. Many feared that voting for individual candidates would corrupt their ballots. [St. Charles; St. Louis; Ray; Jackson]

Late Opening and Early Closing: EP volunteers received reports of polls opening late or closing early. Below is a particularly troubling example of the kinds of complaints EP volunteers received:

- A voter arrived at her polling place at 6:45 am to find that it was not ready. She waited until 7:30 am, but when the polling place was still not ready, she left without voting. [St. Louis]

Other: Voters had other unique questions that did not directly fit into any of the above categories. Some voters reported encountering several problems that covered more than one of the categories. For example:

- A voter reported arriving at his voting place at 6am but had to wait at least another half an hour to for the poll to open. When it did, there was only one election worker on hand. When he finally got a chance to vote, he noticed that the ballot did not contain a listing of the Republican judges and, after he voted, poll workers began issuing a different set of ballots. The voter fears that his vote may not count. [St. Louis]

Nevada Election Protection At-a-Glance

Nevada Summary

Election Protection's "Election Incident Reporting System" contains reports of election problems in counties across Nevada. As of November 24, 2004, the majority of reports were from voters, volunteers, and even some election officials in Clark and Washoe counties.

Based on complaints in the EIRS database, voting problems encountered in Nevada included:

- Problems with voter registration by an outside group that led to an unknown number of voters not being registered to vote;
- Receipt of absentee ballots;
- Implementation of the felony voter statutes;
- Confusion about how to implement provisional ballot requirements;
- Voter intimidation; and
- Poll workers who were, at best, untrained and, at worst, actively dissuading voters from casting votes.

Summary of Complaints and Questions in the State

Below is a sampling of the types of questions and complaints recorded in the EIRS database from voters and volunteers in Nevada.

Absentee Ballot Related Problems: Some Nevada voters reported requesting absentee ballots but not receiving them on time or at all. For example:

- A voter, who attends school in Los Angeles, requested an absentee ballot. She spoke with the Office of Registrar in Nevada and was told that she would have the ballot by the Friday before the election at latest. She never got it and so was unable to vote. [Washoe]

Registration Related Problems: EP volunteers received complaints from voters who had registered to vote but whose names did not appear on the voter rolls. Many of these problems may have stemmed from an incident where a firm, Sproul Associates, reportedly registered voters and threw out all of the Democratic registrants.

Voter Intimidation and Suppression: EP volunteers received reports of voter intimidation and voter suppression campaigns. Voters filed complaints about uniformed and armed police officers stationed outside polling places. Several also reported receiving fraudulent flyers saying their polling place had changed. Some other troubling examples include:

- One voter reported witnessing poll workers only asking minorities to show identification. Then, people without ID were sent to another table, where they were told they were in the wrong precinct and turned away. [Clark]

- Another voter reported receiving a call, purportedly from the "Democratic Party," saying that, due to unexpectedly high voter turnout, Democrats would vote on Wednesday, November 3. [Clark]

Criminal Status Related Problem: EP volunteers answered questions regarding getting the right to vote restored after a felony conviction. Some individuals who had previously been convicted of a felony believed their voting rights had been restored, but then had to submit additional paperwork, even after having received a voter registration card.

Provisional Ballot Problem: EP volunteers received complaints about the implementation of provisional ballot requirements. As we have seen with other states, there were cases of a poll worker telling voters that their provisional ballots would not be counted. NV law allows voters to cast a provisional ballot for federal candidates if their name is not on the voter registration list.

- A Clark County voter, who had registered by mail more than a month and a half before the election but received no confirmation, was not on the rolls at his polling place. The polling place officials would not give him a provisional ballot, and told him he had to go across town to another location. They told him he could vote at the precinct, but "it wouldn't count." The voter had his registration application receipt and identification.

Long Lines: As in other places, some voters in Nevada reported lines as long as three hours, which discouraged some individuals from voting. The problems of long lines usually occur because of an inadequate number of voting machines or inadequate staffing. For example:

- A voter went to his precinct and had to wait more than three hours to vote. He expressed concern about his wife's ability to get access to polls this afternoon because of childcare issues. The lines were expected to be as long in the afternoon and evening. At this polling

> place, there were two districts voting – and the other district's line was only five minutes long. [Washoe]

Other Polling Place Problem: Many voters reported confusion about which polling place they were supposed to vote at. Other voters reported inappropriate procedures at the polling places.

North Carolina Election Protection At-a-Glance

North Carolina Summary

Election Protection's "Election Incident Reporting System" contains reports of election problems in counties across North Carolina. As of November 24, 2004, the majority of reports were from voters, volunteers, and even some election officials in the following counties, in descending order of number of complaints received:

- Wake
- Mecklenburg
- Durham
- Forsyth

Based on the EIRS database, voting problems encountered in North Carolina included:

- Registration related problems;
- Malfunctioning optical scan machines;
- Voter intimidation;
- Accessibility for disabled persons; and
- Confusion by poll workers on how to implement voting laws, particularly provisional balloting.

Summary of Complaints aud Questions in the State

Below is a sampling of the types of questions and complaints recorded in the EIRS database from voters and volunteers in North Carolina.

Absentee Ballot Related Problems: EP volunteers received complaints from voters who did not receive their absentee ballots in time or at all. Other voters expressed concerns that the outer envelope for the absentee ballots included the voter's party affiliation. One particularly troubling example is below:

- One voter requested an absentee ballot from Forsyth County online in early September 2004. She got a request for additional information from the county in September, and she turned that in shortly thereafter, around the third week in September. She was supposedly sent a ballot on September 29, but she did not receive it. She requested a second ballot October 26, but did not receive it until Election Day, and thus could not send it in time. [Forsyth]

Registration Related Problems: Some voters experienced problems having their voter registrations processed correctly. Often, individuals registered to vote but did not appear on the voter rolls. In particular, voters who had moved and reregistered experienced problems. Below are some examples of the kinds of complaints EP volunteers received:

- A poll worker at the Christus Victor Lutheran Church in Durham County called wanting to make note of the fact that there were a large number of voters who moved and reregistered but their names were not on the list. They were being told to vote with provisional ballots. [Durham]

- In Mecklenburg County, a voter registered to vote in person on or about October 4 and received a letter dated October 12 from the Board of Elections stating that her faxed registration could not be processed until they received a signed form delivered to the County Board 20 days before the election. She called the office many times to have them clarify and fix this because she did not fax her registration. [Mecklenburg]

Voter Intimidation/Suppression: Individuals reported incidents of voter intimidation and suppression to EP volunteers. Uniformed police at polling places had a chilling effect on some voters. Other voters reported misinformation campaigns that could result in disenfranchisement. Below are some particularly troubling examples:

- One report states that there were individuals two to three blocks from a polling place stopping passers-by and telling them if they are delinquent on child support or have other legal problems, it is illegal for them to vote and they may get in trouble if they try to vote. [Durham]

- One voter informed EP volunteers that he had arrived home to see flyers on every door in the neighborhood. The flyer said that the polling place was changed to Lake Rim Fire Department, a different location than the polling place listed on the voter's registration card. Election Protection called county Board of Elections, and the election official stated that they did not put the flyers on the door and that the correct polling place was the one on the registration card. [Cumberland]

Machine Problems: Voters in North Carolina reported problems with voting technology at polling places. Voters encountered optical scan machines that jammed, tore ballots, and whose counters did not register an additional vote after voters scanned their ballot. Voters also received ballot receipts that said the vote had not been recorded, but poll workers told the voters not to worry about it.

Disability Access Problems: Some voters with disabilities complained that their polling locations did not accommodate them properly. By law, disabled voters must be provided ways to vote, through curbside voting and/or through accessible polling places. For example:

- One individual reported having trouble when she asked to help her aunt and uncle vote. Her aunt and uncle are disabled; the uncle cannot see and her aunt cannot read. She was reportedly told by a poll worker that the worker would contact the Republican Party to make sure the votes were not counted since she should not have been allowed to help her aunt or uncle vote. [Graham]

- Other voters reported that poll workers would not bring ballots out to curbside voters or that curbside voters had to wait far longer to vote than regular voters. [Durham; Granville; Burke; Wake; Guilford; Forsyth; Gaston]

Provisional Ballot Problems: EP volunteers received complaints about the implementation of provisional ballot requirements. In some cases, voters were not offered provisional ballots when they did not appear on the voting rolls, and in other cases voters reported being given provisional ballots when they should have been able to cast a regular ballot.

Ballot-Related Problems: Some voters registered complaints about confusing or incomplete ballots. Some voters were confused about voting a straight party ticket, as it was unclear if the ballot would be thrown out as an "overvote" if the voter filled in the arrow for straight party ticket and also filled in the arrows for individual candidates. There was also confusion about whether voting the straight party ticket was sufficient to cast a vote for president. Other voters reported receiving ballots on which some candidates for local offices were not listed.

Long Lines: Some voters complained about long lines at the polls and in some cases having to wait up to three hours to vote. Long line issues usually result when there is inadequate staffing or an inadequate number of voting machines.

Arkansas Election Protection At-a-Glance

Arkansas Summary

Election Protection's "Election Incident Reporting System" contains reports of election problems in multiple counties in Arkansas. As of November 24, 2004, the majority of reports were from voters and volunteers in Pulaski and Jefferson counties.

Based on the EIRS database, voting problems encountered in Arkansas included:

- Registration related problems;
- Absentee ballot related problems; and
- Incidents of voter intimidation.

Summary of Complaints and Questions in the State

Below is a sampling of the types of questions and complaints recorded in the EIRS database from voters and volunteers in Arkansas.

Voter Registration Problems: EP volunteers helped individuals with questions or problems related to registering to vote. Many voters reported that they had not received confirmation of their registration or found that they been removed from the registration rolls.

- A voter reported that, together with her husband, she had gone to vote and that neither her nor her husband's name was listed on the voting registry. Both had voter registration cards that showed that they were at the correct polling place. [Pulaski]
- A voter reported that, in preparation for a voter registration drive, he went to the local government office to pick up voter registration forms. A worker at the office gave him the forms but reportedly told him that the applications would have to have been received by May 2004 in order to count for the November election. [Shelby]

Voter Intimidation/Suppression: The EP hotline received reports from individuals reporting incidents of suspected intimidation or unfair polling practices. Below are examples of the kinds of incident reports received by EP volunteers:

- A voter reported that first-time voters, after standing in line to vote, were being sent to the end of the line and that some were being told that if they were Democrats, they had to vote the following day (i.e. November 3rd). [Pulaski]

- A voter reported that poll workers were only asking black voters for identification. The caller, who is herself black, reported that she personally knew one of the poll workers and was still asked for ID, while white voters in front of her were not asked to produce identification. [Little River]

Absentee Ballots Problems: EP volunteers helped voters with questions or problems regarding absentee ballots, generally from people who had requested but never received such ballots.

Provisional Ballot Problems: EP volunteers received complaints from individuals with problems or questions regarding the use of provisional ballots.

- Several voters reported that polling places did not have any provisional ballots on hand and did not get any until hours after the polling places had opened. [Pulaski]

- A voter's wife went to vote at their County polling place for early voting, and noticed that her spouse was not on the list of registered voters. They inquired, and were told he was not on their list and that he must still be registered at his prior county. The husband drove to his old County where he was told that his registration had been rolled over to his new county. Poll workers refused to let him vote a provisional ballot. [Carroll]

Other Problems: EP volunteers helped voters with other voting related problems not categorized above. For example:

- A voter reported that election officials were handing out three different ballots early in the morning on Election Day and one of those ballots did not have the candidates for alderman on it. An official corrected the mistake but those who had voted early were not allowed to recast ballots and, therefore, not allowed to vote for this race. [Pulaski]

Minnesota Election Protection At-a-Glance

Minnesota Summary

Election Protection's "Election Incident Reporting System" contains reports of election problems in counties across Minnesota. As of November 24, 2004, the majority of reports were from voters and volunteers in Hennepin and Ramsey counties.

Based on complaints in the EIRS database, voting problems encountered in Minnesota included:

- Confusion about identification requirements;
- Incidents of voter intimidation; and
- Issues related to same-day voter registration.

Summary of Complaints and Questions in the State

Below is a sampling of the types of questions and complaints recorded in the EIRS database from voters and volunteers in Minnesota.

Voter Registration/Identification Issues: EP volunteers helped voters with problems related to voter registration. Minnesota allows for same-day registration and the majority of the calls came from voters reporting that they were unable to register for lack of proper identification. Some examples of the types of incidents reported to EP are below:

- One student reported that she showed an out-of-state ID and a valid fee statement with her current voting address to poll workers and was not allowed to vote. EP attorneys intervened and had a county official call the polling place and explain that a fee statement with a current address and the voter's name was acceptable identification. [Hennepin]
- One voter reported that poll workers were requiring ID from registered voters, and asking Republican challengers if the ID was OK. [Hennepin]
- An individual tried to register at polls. She had several forms of picture ID, but none were a MN driver's license or ID card. She also had several bills in her name at her current address, sent within the last 30 days. The election judge told her this was insufficient to register, so the voter then asked her neighbor to vouch for her. The election judge still refused to register her. Voter challenged election judge's refusal to accept that attempt to

vouch for her and was told to leave immediately. Eventually, the county auditor intervened, and the individual was allowed to vote. [Stearns]

Voter Intimidation/Suppression: EP volunteers received complaints about suspected voter intimidation or unusual election-related incidents. Some voters reported being intimidated – and deterred from voting or from requesting assistance – by the presence of poll challengers. Other voters reported misinformation campaigns. Below are some particularly troubling examples of the kinds of complaints EP volunteers received:

- A voter reported that Republican challengers were confronting student voters and saying that their names appeared on a list of people who had already voted in another jurisdiction. [Rice]

- A voter reported that, on Election Day, he received a phone call asking if he was going to vote and providing information as to the location of the voter's polling place, which did not match the polling place information he received from the local Board of Elections. [Ramsey]

- A voter reported witnessing Native American voters being challenged, especially when they used identification that showed that they received public assistance. [St. Louis]

- EP received a report that a person acting as a Vietnamese translator was directing Vietnamese voters to vote for Bush. [Hennepin]

Voting Machine Problems: Some voters contacted EP with concerns that their ballots would not be counted because ballot-scanning machines at the polling places were broken or had counters that did not advance when a new ballot was scanned.

Other Problems: Voters also filed complaints about a handful of other miscellaneous problems. For example:

- Poll workers at one polling place told the translator that she could not assist people in voting. EP attorneys intervened and, eventually, the translator was able to assist people who requested her help. [Hennepin]

- One voter expressed concerns about the privacy of her ballot. She reported that the voting area had ten booths, but she had to fill out her ballot at a very visible spot at a large table. Someone made a comment about her choice for president. [Hennepin]

TIER 3 STATES

Texas Election Protection At-a-Glance

Texas Summary

Election Protection's "Election Incident Reporting System" contains reports of election problems in counties across Texas. As of November 24, 2004, the majority of reports were from voters, volunteers, and even some election officials in the following counties, in descending order of number of complaints received:

- Harris
- Dallas
- Tarrant
- Bexar
- Travis
- Fort Bend

Based on the EIRS database, voting problems encountered in Texas included:

- Confusion about how to implement provisional ballot requirements;
- A significant number of Harris County voters not receiving absentee ballots;
- Problems in Harris and Travis counties with e-Slate voting machines;
- Identification requirements;
- Voter intimidation; and
- Confusion among voters about straight party voting.

Summary of Complaints and Questions in the State

Below is a sampling of the types of questions and complaints recorded in the EIRS database from voters and volunteers in Texas.

Absentee Ballot Problems: EP volunteers helped voters with questions and complaints regarding the use of absentee ballots. Absentee ballots were due in to the elections office by Election Day. Most of the complaints related to absentee ballots were from voters who did not receive their ballots. Below is a troubling example of the kinds of complaints EP volunteers received:

- A voter in Harris County requested an absentee ballot on-line in early October. As of October 28, the voter had not received the ballot. The voter called Harris County, and they said she would receive it by October 30. On October 31, the voter still had not received the ballot and called the County Clerk's office back – at which point they said they were very sorry, but there was nothing they could do. [Harris]

Voter Registration Problems and Questions: EP volunteers helped voters with problems related to voter registration. Often, voters had registered to vote, but hadn't received their cards and were wondering if they would still be able to vote. Other voters had moved, but were not sure if they were still registered. Some voters wanted to know if their registration was still valid if they hadn't voted in several years. Below are some examples of the kinds of complaints EP volunteers received:

- One voter submitted a registration form that she printed from a Christian radio station's web site on October 2. The voter did not receive a voter certificate. The voter did not know if she could vote, or where to go to vote. [Harris]

- A voter attempted to vote, but her name was not on the rolls, so she cast a provisional ballot. Subsequently, she verified her voter status and wanted to cancel her provisional ballot and cast a regular ballot. A county election official told her it would be too complicated to cancel. EP volunteers told her to go back to the county official's office and demand that the provisional vote be canceled and that she be permitted to vote a regular ballot. She was eventually able to vote. [Denton]

Voter Intimidation/Suppression: EP volunteers received complaints about suspected voter intimidation or suppression. The most common form of voter intimidation or suppression was misinformation. Other types of intimidation or suppression reported included actions taken by officials that voters viewed as threatening. Below are some particularly troubling examples of the kinds of complaints EP volunteers received:

- During early voting at the Power Center in Harris County, a voter observed Harris County police officers yelling at the 200 or more people in line that they had to show ID and that anyone with a warrant would go to jail. People left the line, including the voter who reported the situation. [Harris]

- An African-American voter went to her polling place with her mother. At the time they arrived, they were the only black voters present. The poll workers were asking all voters for registration

cards or ID and then asking voters if they had moved. She and her mother were subjected to more questions as the workers appeared not to believe the responses. They took her license to check against other records. Reportedly, this did not happen to other voters. She was eventually able to vote. [Travis]

Provisional Ballot Problems: EP volunteers received complaints about provisional ballots from voters, many of whom reported being denied the opportunity to vote by provisional ballot. In Texas, there were complaints of precincts running out of provisional ballots and poll workers not appropriately implementing the provisional ballot laws. For example:

- A voter requested a provisional ballot in Bexar County and the election judge was reluctant to give it to him because it would be "too much paperwork" and "wouldn't count anyway." [Bexar]

- A newly registered voter, who is a new citizen, went to vote on Election Day in Bexar County. He was not found on the voting rolls. The judge at the polling site would not give him or the other people in line with similar circumstances a provisional ballot. The judge was calling downtown every time someone requested a provisional ballot. He was eventually allowed a provisional ballot, but the judge wrote "wrong precinct" on the envelope. [Bexar]

Voting Machine Problems: EP volunteers received reports about problems with voting machines. Several counties in Texas used electronic voting machines and there was some confusion among voters about how to use these machines. Also there were reports of idle machines and other machines breaking down, causing long lines in some jurisdictions. Below are particularly troubling examples of the kinds of complaints EP volunteers received:

- There were several reports of voters having problems having their votes recorded properly. Upon reviewing their votes after voting the straight Democratic Party ticket, they found that the vote for President was for Bush and not for Kerry. This was happening on e-Slate machines in Travis and Harris Counties during early voting. [Travis; Harris]

- At an early voting site in Harris County, only four or five of 20 machines were being used and the machines were very slow, which caused some voters to leave altogether. [Harris]

Identification Problems: EP volunteers helped voters with problems and questions related to identification requirements. Many voters asked EP volunteers for information on the identification requirements in Texas. Voters also reported problems with poll workers being confused about or incorrectly implementing identification

requirements. Below are particularly troubling examples of the kinds of complaints EP volunteers received:

- One voter saw a sign at her early voting polling place in Hays County that said registration card and photo ID were needed to vote. The workers weren't asking for ID, but the voter was concerned that the sign would discourage people from voting. (TX law allow persons to vote without their voter registration card if they have a photo ID.) [Hays]

- In Galveston County, during early voting, a voter was turned away because she did not have a voter's registration card. She had photo ID and was not a first-time voter. [Galveston]

Disability Access and Assistance Problems: EP volunteers received questions and complaints related to disability access and assistance. The issues of disability access primarily involved inaccessible polling places and polling places that provided inadequate or no assistance to disabled voters. Below are some particularly troubling examples of the kinds of complaints EP volunteers received:

- A physically-handicapped voter from Arlington, Texas went to three separate early voting sites and found that none of them were accessible for his van. [Tarrant]

- During early voting, a severely disabled voter who was in his 80's was transported with other nursing home residents to vote. They arrived at a polling place where there was no curbside service. The van then went to another polling place, where they were told there was a very long wait for curbside service. By this time, the voter was tired and asked to go home. At this point, his only option for voting was to vote "far away" at his normal polling place. [Tarrant]

Criminal Status Related Problems: EP volunteers answered questions related to getting voting rights restored after a felony conviction. In Texas, those convicted of felonies can vote if they have fulfilled all aspects of their sentence, including parole, and have re-registered to vote.

Student Status Related Problems: EP volunteers answered questions related to student status. Most questions came from voters unsure if they could vote at their home or at their student address, and some complaints were recorded regarding suspected student disenfranchisement. Below is an example of the kinds of complaints EP volunteers received:

- One voter's son, a student attending school in another Texas jurisdiction, was denied the right to vote because he was told he was not on the voter rolls. He had a voter registration card showing

that he was registered to vote in that jurisdiction. Volunteers advised the voter to instruct her son to go back with all his paperwork and to vote with a regular ballot. [Travis]

Ballot Related Problems: Voters contacted EP volunteers about ballot problems. In Texas, many of the problems were associated with voting a straight party ticket. Also, there were some reports of incomplete or unusable ballots. Below are some particularly troubling examples of the kinds of complaints EP volunteers received:

- A voter from Fort Bend County was given a ballot by an election worker that had already been marked. The poll worker acted as if he had not noticed. The voter complained and, after an extended wait, was eventually given a clean ballot. [Fort Bend]

- There were reports of ballots being incomplete – not including candidates or ballot measures. [Harris]

Language Issues: EP volunteers received complaints about lack of accessibility for voters with limited English skills. Some jurisdictions in Texas are required to provide voting materials in a second language. Below is a particularly troubling example of the kinds of complaints EP volunteers received:

- A woman's Persian-speaking mother, who understands some English, didn't understand how the voting machine works. When the mother asked for assistance, she was shown the Spanish video. The election judge refused to allow the daughter to help her mother saying that it was against the law for the woman, or anyone else, to assist her mother in the voting booth. (TX law allows for anyone to assist voters who cannot understand English as long as they are not their employer, agent of their employer, or officer or agent of their union.) [Harris]

Long Lines: EP volunteers received complaints about long lines. The problem appeared to be caused by an insufficient number of voting booths for the number of voters who turned out. Many of the long lines were reported during the early voting period.

Polling Place Problems: EP volunteers helped voters with problems that arose at the polling place. Many problems related to inadequate staffing and unhelpful poll workers. Some of the issues were reported during Texas's early voting period. Below are some particularly troubling examples of the kinds of complaints EP volunteers received:

- In Tarrant County, a poll worker reported that the number they were calling at the county to check individuals' registration status was always busy. At this polling place, poll workers could not check a person's status on the computer because they did not have

the CD containing the voter list. Virtually everyone was getting a provisional ballot – increasing the likelihood that the supply would run out. [Tarrant]

- A report came in that voters from Precinct 809 were coming to Precinct 323. Both Precinct 809 and Precinct 323 used to be at the same location. This year, they were separated. Precinct 809 had eight poll workers for only 200 total voters, while Precinct 323 had only three poll workers for "many more voters." [Harris]

Other: Voters had other kinds of questions that do not fit into any of the above categories. For example:

- One voter reported that his employer would not let him off work to vote. We advised him that Texas law allowed employees two hours off work if polls were not open for two hours outside the voter's normal work hours. [Harris]

Georgia Election Protection At-a-Glance

Georgia Summary

Election Protection's "Election Incident Reporting System" contains reports of election problems in counties across Georgia. As of November 24, 2004, the majority of reports were from voters, volunteers, and even some election officials in the following counties, in descending order of number of complaints received:

- Clayton
- DeKalb
- Fulton

Based on the EIRS database, voting problems encountered in Georgia included:

- Voters who registered in voter registration drives who did not appear on voter lists;
- Machine problems;
- Confusion over voter identification requirements;
- Confusion over provisional ballot requirements;
- Long lines and long waits to vote at polling places; and
- Inadequate notice of polling place changes.

Summary of Complaints in the State

Below is a sampling of the types of questions and complaints recorded in the EIRS database from voters and volunteers in Georgia.

Voter Registration Problems and Questions: EP volunteers helped voters with problems related to voter registration, especially in Clayton, DeKalb, and Fulton counties. Many people reported that they had thought they had registered, but did not appear on voter lists or in the Secretary of State's database. Some of these voters had registered through the Department of Motor Vehicles, others through their high school, and others through independent voter registration drives. Some had received voter registration cards in the mail, but still were not on the lists or in the database.

Other voters experienced problems with their voter registrations having been purged. For instance, one voter received a voter registration card in the mail in June 2004 but was told she had been purged from the rolls. Other voters reported being placed on the "inactive voter" list and either denied the opportunity to vote or directed to cast provisional ballots.

Provisional Ballot Problems: EP volunteers received complaints about provisional ballots from voters, many of whom reported being denied the opportunity to vote by provisional ballot. As with many of the other states, there was confusion among poll workers in Georgia about the implementation of provisional ballot requirements. This confusion led to voters either not being allowed to vote by provisional ballot or to voters having to take extreme measures in order to obtain the provisional ballots. Also, in some cases, polling places did not have provisional ballots available. Below are some examples of the kinds of complaints EP volunteers received:

- A voter in DeKalb County reported registering at the DMV but did not show up on the voter rolls. Poll workers refused to give her a provisional ballot. She insisted that she needed a provisional ballot, and they gave her a telephone number to call to get "authorization." Another voter in Clayton County was told to go to the county courthouse to receive authorization that she was eligible to vote and cast a provisional ballot there. [DeKalb; Clayton]

- An EP volunteer reported that when she arrived at the polling place she was covering, there were no provisional ballots. When she called the county office, she was told she would have to go downtown to get the ballots herself. She went downtown and the officials there were very rude, but did eventually bring provisional ballots to the polling place. [Dougherty]

Identification Problems: EP volunteers helped voters with problems and questions related to identification requirements. In Georgia, only first-time voters who registered by mail and who did not include a copy of an acceptable form of identification with their registration application must show ID at the polls. Poll workers at several polling places were requiring that all voters show ID, and there was confusion among voters and poll workers over what was acceptable identification.

Long Lines: EP volunteers received complaints about long lines, especially in Clayton County. Long lines and excessive waits often arose because polling places had too few workers or machines or both. Voters were particularly inconvenienced when they waited for long periods to vote, only to be told that they were at the wrong polling place or denied a provisional ballot when they were eligible. Below are some particularly troubling examples of the kinds of complaints EP volunteers received:

- Some precincts in Fulton County had only four booths at polling places, resulting in long lines. An EP volunteer was told by a poll worker that "there weren't more booths because Secretary of State believes blacks don't vote." [Fulton]

- A voter in Clayton County waited 3 hours to vote. When he went to work after voting his boss told him to go home because he should have made other arrangements. [Clayton]

Late Poll Openings: EP volunteers received reports of polls opening late or closing early. Below is a particularly troubling example of the kinds of complaints EP volunteers received:

- Polls in Hancock County, GA opened at least 3 hours late. The Republican Party sought and received a mandamus order in GA Supreme Court to close polls on time at 7 p.m. even though GA law allows polls to close late if necessary. [Hancock]

Polling Place Problems: EP volunteers helped voters with problems that arose at the polling place. Many voters complained that they had not been informed their polling place had changed. In some cases, old polling places did not have adequate signage directing voters to their new polling places. Combined with long lines, this was particularly discouraging to voters. Below are some examples of the kinds of complaints EP volunteers received:

- A voter in Clayton County received her voter registration card in June which listed her polling place as "Pt. South." She waited in line there for two hours and then was told that her location had been changed to Callaway Headquarters. She had also checked the County's website recently and it was still listing Pt. South. [Clayton]

- A voter in DeKalb County had her designated polling place changed without notice. Meanwhile, her husband's polling place remained the same. The voter lives in same house as her husband, and they had not moved since they registered. [DeKalb]

Louisiana Election Protection At-a-Glance

Louisiana Summary

Election Protection's "Election Incident Reporting System" contains reports of election problems in parishes across Louisiana. As of November 24, 2004, the majority of reports were from voters, volunteers, and even some election officials in Orleans County.

Based on the EIRS database, the voting problems encountered in Louisiana included:

- Incomplete registration rolls at the polling place;
- Machines malfunctioning or broken;
- Confusion by voters and poll workers regarding provisional ballots, including not enough provisional ballots available;
- Long lines, in many cases over 2 hours and in some cases over 7 hours long; and
- Confusion over correct polling place and other polling place practices.

Summary of Complaints in the State

Below is a sampling of the types of questions and complaints recorded in the EIRS database from voters and volunteers in Louisiana.

Voter Registration Problems and Questions: EP volunteers helped voters with problems related to voter registration. Some voters reported that they were not on the registration rolls at their polling place even though they had registered on time, and in some cases had actually received a voter registration card. In these cases, the response from the poll workers varied. Sometimes, the voter was allowed to vote after filling out an affidavit; some voters were given provisional ballots; and some were told they could not vote at all.

Provisional Ballot Problems: EP volunteers received complaints about provisional ballots from voters, many of whom reported being denied the opportunity to vote by provisional ballot. Many voters who found that their names did not appear on the registration rolls reported difficulties in obtaining provisional ballots. In some cases, poll workers did not offer provisional ballots to voters whose names did not appear on the rolls. In other cases, polling places simply did not have any provisional ballots to offer voters. In still other cases, voters were offered provisional ballots, but these ballots did not include the presidential candidates. There were also many reports from around the

state of voters being denied provisional ballots on the grounds that the polling places had run out of them.

Voting Machine Problems: EP volunteers received reports about problems with voting machines. Some polling places had no functioning machines at some points in the day. At other polling places, broken machines meant an insufficient number of functioning machines and long lines for voters. Below is an example of the kinds of complaints EP volunteers received:

- In one polling place in Orleans County, all three machines were down from 6am to 9am. The voter reported that at least 49 people were unable to vote. [Orleans]

Identification Problems: EP volunteers helped voters with problems and questions related to identification requirements. Many reported that they were required to show ID unnecessarily, including those who were not first time voters.

Long Lines: EP volunteers received complaints about long lines, including reports of voters leaving the polls before they voted due to the wait. The problem appeared to be caused by an insufficient number of voting booths for the number of voters who turned out. Below are some particularly troubling examples of the kinds of complaints EP volunteers received:

- One Election Protection worker reported that 85 students at Xavier University signed a complaint form that stated they had to wait over seven hours in line to vote. [Orleans]

- One voter reported that, after waiting in line, she was told she was in the wrong polling place. After waiting in a long line for the second time at the polling place she was directed to, she was told the first polling place was the correct one. [Orleans]

Polling Place Problems: EP volunteers helped voters with problems that arose at the polling place. Some voters reported poll workers following inappropriate procedures at the polling place. One voter reported that even though he was on the voter registration rolls at the poll and had a driver's license, he was not able to vote because he didn't have his voter registration card. (*note*: LA law allows for persons to vote without their registration card if they have photo ID.) Other complaints involved rude and overwhelmed poll workers, such as one case where the poll worker yelled at a line of voters, "Haven't you ever voted before?"

WILL PROBLEMS IN EARLY PRIMARIES AFFECT

PEOPLE FOR THE AMERICAN WAY FOUNDATION

The Democracy Campaign
Reforming Elections. Protecting the Vote

WWW.PFAW.ORG

WILL PROBLEMS IN EARLY PRIMARIES AFFECT THE BUCKEYE STATE?

VOTING IN EARLY PRIMARIES POINTS TO POTENTIAL PROBLEMS IN OHIO

THE 2008 ELECTION IS HISTORIC IN MANY WAYS, AND voter involvement is expected to be the highest ever seen. On Super Tuesday, according to the Center for the Study of the American Electorate, 12 states saw record turnouts in their Democratic primaries and eleven in their Republican contests. The Chesapeake Primary (Maryland, Virginia, and Washington, DC) also saw exceptionally high turnout. Especially exciting are exit polls in many states that indicate that turnout increased exponentially among historically disenfranchised communities – in some places over 50 percent.

With the increased turnout in the primaries, we have seen increased pressure on our already burdened voting system. High turnout led to long lines at some polling stations, exacerbated by machine failures, too few ballots and too few check-in machines. Poll workers were not prepared to handle so many voters; they were inadequately trained on the use of provisional ballots and machine functions.

During some of the early the 2008 primaries, the Election Protection Coalition mobilized and dispatched trained Election Protection (EP) poll monitors to polling locations in targeted communities and provided legal support and technical assistance to citizens who experience difficulties voting. To date, EP has recorded more than 2900 incidents.

The problems seen in the early primaries are significant not only because of high numbers of incidents, but because they indicate what we might see in the upcoming Ohio Primary on March 4th. In the past, Ohio has seen its share of election problems. In a report on the 2004 general elections released by People For the American Way Foundation, the NAACP and the Lawyers' Committee for Civil Rights Under Law called "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," we reported a variety of voting problems that the EP coalition documented in its Election Incident Reporting System (EIRS), including:

» Improper requests for and non-uniform acceptance of identification

» Improper instructions on when to offer a provisional ballot

- Long lines due, in part, to poorly trained poll workers, inadequate staffing or machine failures
- Long-time voters showing up at the polls and finding themselves no longer listed
- Non-uniform procedures for handling voters who requested, but did not receive absentee ballots
- Inequitable distribution of voting materials (e.g. ballots or machines)
- Deceptive practices and intimidation tactics

On Super Tuesday and during the Chesapeake Primaries, voters across the country reported many of the same problems, but the most common issues included:

- Registration processing and long-time voters showing up at the polls and finding themselves no longer listed
- Machine failures resulting in long lines
- Strict voter ID requirements and poll worker confusion about when to ask for ID
- Inadequate poll worker training and limited resources also resulting in long lines and other problems

This summary provides a snapshot of the types of problems and reports the EP coalition has documented and experienced during this year's primary elections and what we could potentially see in the upcoming Ohio primary. Based on the potential problems that voters could experience in Ohio, People For the American Way Foundation (PFAWF) and other members of the EP coalition will be on the ground providing legal and informational support to voters at the polls.

PROBLEMS SEEN IN THE EARLY PRIMARIES

HIGH VOTER TURNOUT

Most of the 2008 primary election issues relate to the higher-than-expected voter turnout. Missouri, Illinois, New York, New Jersey, Massachusetts, and Arizona all reported record number of Democratic voters—in some cases more than a 47 percent increase over voter turnout in 2006.[1] Virginia saw exceptionally high turnout. Edison Media Research and Mitofsky International, the firm that conducts the National Election Pool exit polls, estimated that 930,000 voters participated in the Virginia primary on February 12; up more than 130 percent from the 396,223 who voted the Virginia Democratic primary in 2004.

In Santa Clara County California, higher-than expected turnout caused shortages in ballots, particularly Democratic ballots.[2] Election officials provided temporary ballots and asked voters to bring and use their sample ballots they had received previously in the mail. Young voter turnout was twice as high in Massachusetts, three times higher in Georgia and four times higher in Tennessee than in the last election.[3]

With the increased voter turnout, problems that would normally be minor inconveniences created major Election Day snarls that were reflected in the hotline calls we received:

» One voter at the Verde Valley Church of Christ in Camp Verde, Arizona reported that when she went to vote there were 300 people waiting in line. The voter waited for two and a half hours before being able to vote.

» Voters in Atlanta, Georgia reported that the number of electronic voter look-up machines were too few to accommodate the large number of voters. When two of the three machines broke down, voters were forced to wait as long as an hour an a half. Many voters left before voting.

» In DeKalb County, Georgia, the overwhelming number of voters caused bottlenecks at the check-in table where there were too few poll workers and check-in machines. There were eight voting machines, but only two at a time were being used because of the bottlenecks.

» One polling place in Memphis, Tennessee ran out of ballots due to the large number of voters. Over 100 people waited more than an hour and a half to vote while others had to leave without voting.

PROVISIONAL BALLOTING V. EMERGENCY BALLOTS

The Help America Vote Act of 2002 (HAVA) set new nationwide standards intended to protect every American's right to vote. The new rules include the provisional ballot, which voters can use if their eligibility is in doubt. The original intent of these provisional ballots was to guarantee a ballot to all voters at the polls. However,

1. http://www.democrats.org/a/2008/02/democrats_share.php
2. See Press Release: http://www.paloaltoonline.com/media/reports/120225#053.pdf
3. See Press Release: http://www.newvoterproject.org/news-room/releases/news-releases/youth-turnout-up-sharply-in-key-super-tuesday-states

because HAVA does not specifically require those provisional ballots to be counted, this law gives states wide latitude in determining which, if any, provisional ballots to count, resulting in a vast number of them going uncounted.

In general, provisional ballots will only be counted if they are cast in the correct precinct or polling place. Some states do allow for the counting of a voter's provisional ballot for federal races if cast in the wrong precinct, but this is a rarity. Because HAVA fails to create a uniform system of counting provisional ballots, enormous confusion has been created by inadequately trained election officials and poll workers alike who inappropriately distribute, or sometimes fail to distribute, provisional ballots.

Emergency ballots, on the other hand, are just that: ballots voters can cast in "emergencies," (i.e. – when voting machines crash or are otherwise unavailable on Election Day). These ballots are meant as a back-up paper option when technology fails. But even emergency ballots are not failsafe. When mass problems require their usage, and supplies are not adequate, the potential arises for poll workers to run out of emergency ballots, causing voters to be left without the ability to cast their ballot. Further, some poll workers and election officials have been improperly treating emergency ballots and provisional ballots in the same manner. This poor training can lead to a delay in counting the ballots of otherwise eligible voters. For example, "emergency voters" who are forced to cast paper ballots when systems fail are not the same as "provisional voters" or subject to after-the-fact investigations of their eligibility as required under HAVA.

During the 2004 election cycle, the EP coalition reported more than a thousand complaints concerning provisional ballots, including widespread confusion over the proper use and counting of provisional ballots because of widely differing regulations from state to state and even from one polling place to the next. Many voters reported that poll workers were either refusing to give out provisional ballots or were simply unaware of the federal requirements to distribute them. Notably, many voters who complained of not being listed on the voter registration list subsequently complained either about not being offered provisional ballots or of not knowing whether these ballots would ultimately be counted.

Unfortunately, in 2008, the confusion over the proper use of provisional ballots and emergency ballots persisted. For example:

» On Super Tuesday, voters at the Westside Jewish Community Center in Los Angeles, California were turned away because voting machines still had not arrived at the polling place as of 10:45 a.m., more than three hours after the polls opened. Instead of being provided with emergency ballots, voters were simply turned away, while others chose to cast provisional ballots at other local polling places.

» On Super Tuesday, at John Jay College in New York City, New York, a voter called to report that all the machines at the precinct were broken. Poll workers gave voters provisional ballots rather than emergency ballots. Many voters chose simply not to vote.

» In Santa Monica, California, a poll worker gave one voter a provisional ballot when it was taking him too long to find her address in the book. When the voter insisted that she wanted a regular ballot, another monitor looked for her name and found it. She was eventually able to vote a regular ballot.

Problems Seen in the Early Primaries

Voting Machine Problems

HAVA also requires all states to replace lever and punch card voting equipment with more updated technology and requires each voting precinct to have at least one accessible voting machine system. In 2004, EP received thousands of complaints concerning machines inaccurately recording their choice in various races or not recording their votes at all. In 2006, of the 47.7 percent of EIRS entries that reported voting related problems to EP, nearly 21 percent were from individuals reporting voting equipment problems. Voters in over 35 states reported some type of voting machine related problem.

Common voting machine problems reported to the EP hotline and local command centers throughout the country, including all of our targeted states, in past years include:

- Broken down machines or missing ballot activator cards that caused late opening of poll places and voters leaving the polls without voting
- Vote switching/flipping, where voters voted for one candidate but voting machines showed that they voted for a different candidate
- Incomplete ballot choices showing on voting machines
- Missing votes or votes not displayed on review screens before voters cast their ballots
- Machines or devices on machines for voters with disabilities failing to function
- Machines destroying ballots
- Poll workers mistakenly giving voters the wrong ballots or ballot cards for voting machines.

Perhaps the biggest fiasco in 2006 involving voting machines was the congressional race in Sarasota County, Florida, where evidence suggests voting machine errors caused more than 18,000 votes simply to disappear in a congressional race where only 373 votes separated the top two candidates.

In the 2008 primaries, voting machine problems have once again been a source of frustration for many voters. Reports have come in about machines not working properly, ballots being improperly handled or possibly not counted at all or complete malfunction of voting machines at polling places. In a few places, polling places opened late when the machines were not working properly.

The types of problems recorded include:

- On Super Tuesday, at the Nativity Church in El Monte, California, voters reported all of the Republican ballots were rejected repeatedly. The poll worker placed the rejected Republican ballots in a bucket underneath the table and said they would be counted at a later time.
- A voter in Barnesville, Maryland arrived at the polls at 7:00am only to discover that none of the machines had working printers and no voters were able to vote at that time. The voter waited until 7:45am and then left to go to work without voting.
- At Ebenezer Baptist Church in San Francisco, California, the ballot tally machine was not working. Voters were told to leave their ballots and that they would be counted later.
- At Theater for a New City in New York, New York,

a voter found that the only voting machine for his district was out of order. Voters were directed to a table without privacy to vote on an emergency ballot. Ballots were folded into quarters and placed in a plain cardboard box to be counted later.

VOTER ID ISSUES

Since the passage of HAVA in 2002, which first introduced federal voter identification requirements, many state legislatures have passed new voter identification rules purporting to help prevent voter fraud. However, study after study has proven that there is no evidence to support the claim that significant voter fraud exists in the United States or that identification requirements would fix such a problem if it were to exist. The Carter-Baker Commission on Federal Election Reform itself acknowledged that "there is no evidence of extensive fraud in U.S. elections or of multiple voting."[4] In addition, according to a 2005 study by the Ohio League of Women Voters, only four in more than nine million ballots cast in Ohio in the 2002 and 2004 elections were found to be fraudulent.[5] Furthermore, as explained in PFAWF's amicus brief in the Supreme Court for the Indiana voter ID cases, *Crawford v. Marion County Election Board* and *Indiana Democratic Party v. Rokita*, voter ID is an unnecessary response to the purported existence of voter impersonation fraud.[6]

On the contrary, there is significant evidence to illustrate one thing that these new voter identification rules have done; they have posed a significant burden to approximately 12 percent of voting-age Americans—primarily voters in typically disenfranchised communities: the poor, racial minorities, senior citizens, and students—who do not have driver's licenses.[7] Under HAVA, only first-time voters who register by mail are required to show ID before voting, and they can choose from a number of different types of identification. The ID requirements in more than half of the country, however, are significantly more restrictive.[8] Twenty-four states now require all voters to present ID at the polls on Election Day.[9]

4. Jimmy Carter and James Baker, "Building Confidence in U.S. Elections Report of the Commission on Federal Election Reform," CFER Sept. 2005, at 18, *available at* http://www.american.edu/ia/cfer/report/full_report.pdf. (visited Dec. 15, 2006).

5. Ian Urbina, "New Registration Rules Stir Voter Debate in Ohio," New York Times, *available at* http://www.nytimes.com/2006/08/06/us/06ohio.html?ex=1312516000&en=6090bc7fc7dce1398&ei=5088&partner=rssnyt&emc=rss (visited Aug. 22, 2006).

6. Brief of Amici Curiae the Brennan Center for Justice; Demos: A Network for Ideas & Action; Lorraine C. Minnite; Project Vote; and People For the American Way Foundation in Support of Petitioners, *Crawford v. Marion County Election Board; Indiana Democratic Party v. Rokita*, *available at* http://moritzlaw.osu.edu/electionlaw/litigation/documents/Rokita-BriefamicuscuriaeofBrennan.pdf

7. Spencer Overton, "The Carter-Baker ID Card Proposal: Worse Than Georgia," Roll Call, 2005, *available at* http://www.carterbakerfloorm.com/rollcall.php (visited Dec. 15, 2006).

8. 19 states require ID for all voters (accepting both photo and non-photo ID), 2 states require all voters to show photo ID, 3 states request all voters how photo ID, and 2 states require ID of all first-time voters, according to Electiononline.org, *available at* http://www.electiononline.org/Default.aspx?tabid=364 (visited Dec. 12, 2006).

9. *Id.*

Problems Seen in the Early Primaries

During the early 2008 primaries, several types of ID-related problems have been reported. For example:

- Voters in DeKalb and Fulton Counties in Georgia experienced long delays at polling places as the poll workers implemented new voter ID laws that required each voter to be confirmed as eligible to vote by looking them up in an electronic voter registration machine.
- Poll workers at Westfield Elementary School in Glen Ellyn, Illinois required all voters to show identification. They turned away voters without ID despite information provided by poll watchers indicating that voters do not need to show ID in most cases.
- Long-time voters at Gospel Temple Baptist Church in Chicago, Illinois were surprised when poll workers required voters to produce ID at the polls. Voters were turned away and not allowed to vote, even though Illinois law does not require anyone other than first time voters to show photo identification.

Voter Registration Issues

In the past, we have seen politically-motivated voter purges directed at suppressing the vote of historically disenfranchised communities. In the run-up to the 2004 elections in Florida, People For the American Way Foundation discovered that then-Governor Jeb Bush planned to implement a so-called "purge list," as he had done in 2000. PFAW Foundation obtained a copy and found voters on the purge list who were, in fact, eligible. Governor Bush later withdrew the purge list under allegations that, among other things, the list focused primarily on African Americans (more likely to vote Democratic in Florida) and had no Hispanics (more likely to vote Republican in Florida).

While we have not found coordinated efforts to keep people from the voter rolls in the 2008 primaries, we have documented a disconcerting number of voters who were inexplicably removed from the rolls.

Examples include:

- On Super Tuesday, one Arizona voter in Maricopa County received confirmation from the county that she was registered and even received a sample ballot from the county, but was still unable to vote.
- On Super Tuesday, a regular voter in Brooklyn, New York discovered her name was not on the voter roll. She and others who voted as recently as 2006 found they were not on the registration list.
- A voter in Hyattsville, Maryland went to vote in the Democratic Primary and was told that she could not vote because she was not registered as a Democrat, despite being listed as a Democrat on her voter registration card. She was required to cast a provisional ballot.
- More than 100 long-time Democratic voters at Westside High School in New York, New York were told that they were not on the registration list. Some of the voters were able to vote by affidavit, but others left without voting.

POLL WORKER TRAINING

Many of the problems at the polls resulted from poll workers' confusion over how to use certain voting machines, the proper distribution of provisional and emergency ballots and other basic voting information, as demonstrated above. In some cases, poll workers were openly partisan and intimidating to voters.

For example:

» In Los Angeles, California a registered voter asked the poll worker for a Republican ballot. The voter felt intimidated when, in her words, the "poll worker booed and hissed" at her.

» Poll workers at one polling place in San Francisco, California could not open the polling place on time because they did not know how to plug in the voting machines and did not know where to find the register of voters. The polling place was understaffed and many voters left before voting.

» In Santa Monica, a voter complained about a volunteer at her polling location who was rude to Republicans and did not immediately place Republican ballots into the ballot box. In addition, the voter's son, who is registered non-partisan, was encouraged to vote Democrat instead of being given the non-partisan ballot that he requested.

» In Baltimore, Maryland, poll workers did not have any experience or training on the computer system used to check voters in. It took poll workers fifteen minutes to find one voter's name.

LOOKING AHEAD TO OHIO

ACCORDING TO A RECENT *WALL STREET JOURNAL* article,[10] Ohio elections are more complex than ever. In Cuyahoga County alone, the epicenter of many problems in the 2004 presidential election, there are 59 separate election jurisdictions, including cities, school districts and other taxing authorities using 4,300 different ballot types, by jurisdiction, precinct and party.[11]

Ohio's new Chief Elections Officer, Secretary of State Jennifer Brunner, ran on a platform of fair, free, open and honest elections in Ohio and has already taken courageous steps to insure integrity in the voting process.

We are encouraged that Secretary Brunner has set up an advisory council to her office's Voting Rights Institute. This group, which includes PFAW's Ohio State Coordinator, Shaun Tucker, was put in place to provide leadership on voting rights issues to the Secretary, as well as to offer a transparent process including Ohio's leading voting rights advocates, election law experts, elections officials, party officials and state legislators. This is a complete turnaround from the past administration, which treated advocates as adversaries.

As part of Secretary Brunner's attempt to reform the voting system in Ohio, she is supporting the recommendations of the EVEREST Report,[12] which were developed by a team of election reform experts and advocates. Although we may not agree with all of the recommendations from this report, we do agree with the study's conclusion that there are significant risks with Ohio's voting systems.[13]

Despite Secretary Brunner's commendable efforts, based upon our experience from our year-round work in Ohio and recent experiences in the 2008 primaries, we have decided to conduct on-the-ground Election Protection activities in Cuyahoga County, Ohio. The primary issues that we will be monitoring include:

1. Voting machine functionality and availability
2. Voter ID and the use of provisional ballots
3. Deceptive practices and intimidation tactics

VOTING MACHINE ISSUES

In 2004, Election Protection received numerous reports of voting machine problems from Cuyahoga County, Ohio, resulting in the disenfranchisement of many voters.[14]

For the 2008 elections, Cuyahoga County has switched

10. http://online.wsj.com/article/SB120364389402984793.html
11. Cuyahoga County Board of Elections. http://boe.cuyahogacounty.us/en-US/home.aspx.
12. http://www.sos.state.oh.us/sos/info/everest.aspx
13. http://media.pfaw.org/PDF/capitolhill/01-09-08-Brunner-Local-and-National-Signatories-Letter.pdf
14. In 2004, a polling place in Cuyahoga County, Ohio was forced to shut down at 9:25 a.m. on Election Day because no machines were working. Similarly, during Ohio's primary election in May 2006, a polling place did not open until 1:30 p.m., because poll workers did not know how to set up voting equipment. "Cleveland Polling Place Delays Statewide Election Results," Newsnet5.com, May 3, 2006, *available at* http://www.newsnet5.com/politics/9144311/detail.html (visited Dec. 16, 2006).

from the touch screen machines to an entirely paper ballot system. Ballots will be counted at a central location. While this may limit the number of delays and problems seen at the polling place, another concern has arisen, which is the increased potential for overvotes. Because of the use of central count optical scanners instead of precinct count optical scanners, voters do not have the ability to correct ballots they may have filled out incorrectly. In precinct based optical scanners, when a voter fills out her ballot, but accidentally fills in two candidates for the same race or overvotes, the scanner will refuse to record the vote and require the voter to correct her ballot. However, central count optical scanners do not provide this option and, thus, have been shown to lose far more votes. Hence, it is very important that voters are properly informed about how to fill out their ballots before they are cast, and we will be training our volunteers to assist voters at the polls.[15]

VOTER ID AND PROVISIONAL BALLOTS

In January 2006, the Ohio legislature passed HB 3, which modified the state's election law to include, among other things, new voter ID requirements. These ID requirements are complicated and vague, and many poll workers do not fully understand them. An example of poll worker confusion occurred during Ohio's August 8, 2006 special election, when poll workers forced voters with valid drivers' licenses to cast provisional ballots because their licenses had old addresses. House Bill 3, however, expressly allows for voters to present drivers' licenses with former addresses to vote by regular ballot, as Ohio does not require its citizens to apply for updated licenses if they move.[16] Consequently, PFAW was able to supplement the EP Voters' Bills of Rights with additional literature specifically aimed at addressing the voter ID requirements to ensure that voters were not deterred from voting. This was extremely effective in giving voters specific, detailed instructions on what they need to bring to the polls in light of the new Ohio voter ID law.

While we believe that Secretary Brunner has taken steps to better inform poll workers and voters about the Ohio ID law, our past experiences in the general elections and even the recent primaries have shown that not all poll workers are adequately trained or simply do not appropriately enforce these requirements. Hence, this is another area in which our EP poll monitors will be providing assistance.

15. The Brennan Center For Justice, *"Machinery of Democracy: Voting System Security, Accessibility, Usability, and Cost,"* available at http://brennan.3cdn.net/cb325689a9bbe2930e_0am6b09p4.pdf

16. After the August special election, PFAWF sent a letter to Ohio's Secretary of State Kenneth Blackwell asking that he clarify the voter ID laws by issuing a directive to election officials that voters with a valid driver's license or state ID that has an old address can vote by regular ballot. Later, an Ohio homeless coalition filed a lawsuit in an Ohio federal court, contending that the state's voter ID requirements were vague and confusing. Prior to the November 2006 election, Secretary of State Kenneth Blackwell entered into a consent order agreeing to clarify the state's voter ID rules. The order made clear that, among other things, voters presenting valid drivers' licenses with either a former address could vote by regular ballot, and voters presenting a military IDs that did not have their current addresses could vote by provisional ballot by providing the last four digits of their social security numbers.

to voters at the polls so that they are able to cast a regular ballot and have that ballot counted on Election Day.

DECEPTIVE PRACTICES AND INTIMIDATION TACTICS

In 2004, voters repeatedly complained about misinformation campaigns via flyers or phone calls encouraging them to vote on a day other than November 2, 2004 or of false information regarding their right to vote.[17]

In particular, in Ohio, some voters complained of poll workers racially profiling African-American voters by asking them for ID and not doing the same for other voters. In 2006 and in the recent primaries, we have also received complaints through the EP Hotline regarding intimidating police presence at or near polling locations. While we are hopeful that such tactics will not occur during this upcoming primary, we will still be diligent in preparing our Election Protection poll monitors for any potential abuses.[18]

CONCLUSION

SOME BASIC CHANGES CAN BE MADE IN TIME FOR THE November general elections. People For the American Way and People For the American Way Foundation (PFAW/F) and our allies will be working over the next months to help prepare election administrators for the November elections, which are predicted to bring out a record number of voters. Already, we have witnessed this occurrence in the recent primaries. PFAW/F encourage positive, proactive changes, including establishing uniform standards for counting provisional ballots, an increase in the number of effectively trained poll workers—while making a concerted effort to recruit younger poll workers—increased voting day resources (i.e. more emergency ballots, etc.), more educational outreach to voters about the types of voter identification needed, and passage and enforcement of legislation preventing deceptive practices and voter suppression schemes. While these initial recommendations are not all encompassing, they represent realistic goals that we can all work toward achieving in time for the November 2008 Presidential election. We look forward to working with our allies from all sectors in the community to protect the rights of all voters at the polls.

17. In Ross County, Ohio a voter received an unidentified phone call from someone telling him to vote at an incorrect location instead of his usual polling place. We confirmed the correct place to vote. *www.electionaustreness.org, Incident 698.*

18. In Hamilton County, Ohio, poll monitors observed unusual police activity at the Evanston Community Center on Election Day. Reports included a wreck and a regular meeting with community leaders that officers were involved in. Cruisers were sighted out front with lights flashing. Another arrived and an officer entered the building. He was later located inside the building, nowhere near the voting. When the poll monitor explained that some voters were uncomfortable with his cruiser out front, he volunteered to move his car. *www.electionaustreness.org, Incident 5812 Also 5735, 5742*

BACKGROUND ON THE ELECTION PROTECTION PROGRAM

OVER THE LAST SEVEN YEARS, PEOPLE FOR THE American Way Foundation, as part of the Election Protection coalition, has worked to protect the vote across the country with the 1-866-OUR-VOTE hotline and the development of MyPollingPlace.com, providing voters across the country free legal and general assistance leading up to and on Election Day. Since its inception, the Election Protection program (EP) – led by People For the American Way Foundation, the NAACP and the Lawyers' Committee for Civil Rights Under Law, has become the largest non-partisan voter protection effort in the country. Over the years, the Election Protection coalition has mobilized and trained over 35,000 volunteers. During the 2004 election cycle, EP mobilized 25,000 trained volunteers, including 8,000 legal volunteers, who were recruited to monitor polling places, educate voters, facilitate a dialogue with local and state election officials, provide legal support to poll monitors and answer the voter assistance hotline, which received over 200,000 calls from voters in all 50 states. In addition to direct services to voters, the Election Protection coalition successfully collected over 45,000 incidents documenting the myriad of problems inherent in our electoral system, and PFAWF received over six million hits to our polling place indicator MyPollingPlace.com.

In 2006, the EP Coalition identified approximately 2300 precincts in 16 target states with the greatest need for Election Protection. For EP 2006, PFAWF focused our field work to cover communities where we had been actively engaged in voter registration throughout the year. With the continued use of the EP Hotline (1-866-OUR VOTE), EP 2006 was able to assist communities across the country beyond where we had ground operations. In 2006, PFAWF worked with the Louisiana Voting Rights Network and the NAACP Legal Defense and Educational Fund to help protect the rights of New Orleans voters in their city's municipal elections. We helped displaced voters request and cast absentee ballots, urged the Secretary of State to make administrative changes to make sure more absentee ballots would be counted, and supported on-the-ground activities on Election Day. Volunteers and coalition lawyers helped voters identify their polling places (many of which had been moved), made sure voters without identification were able to cast ballots, worked with election commissioners to make sure voters were not turned away and got police to move away from polling sites.

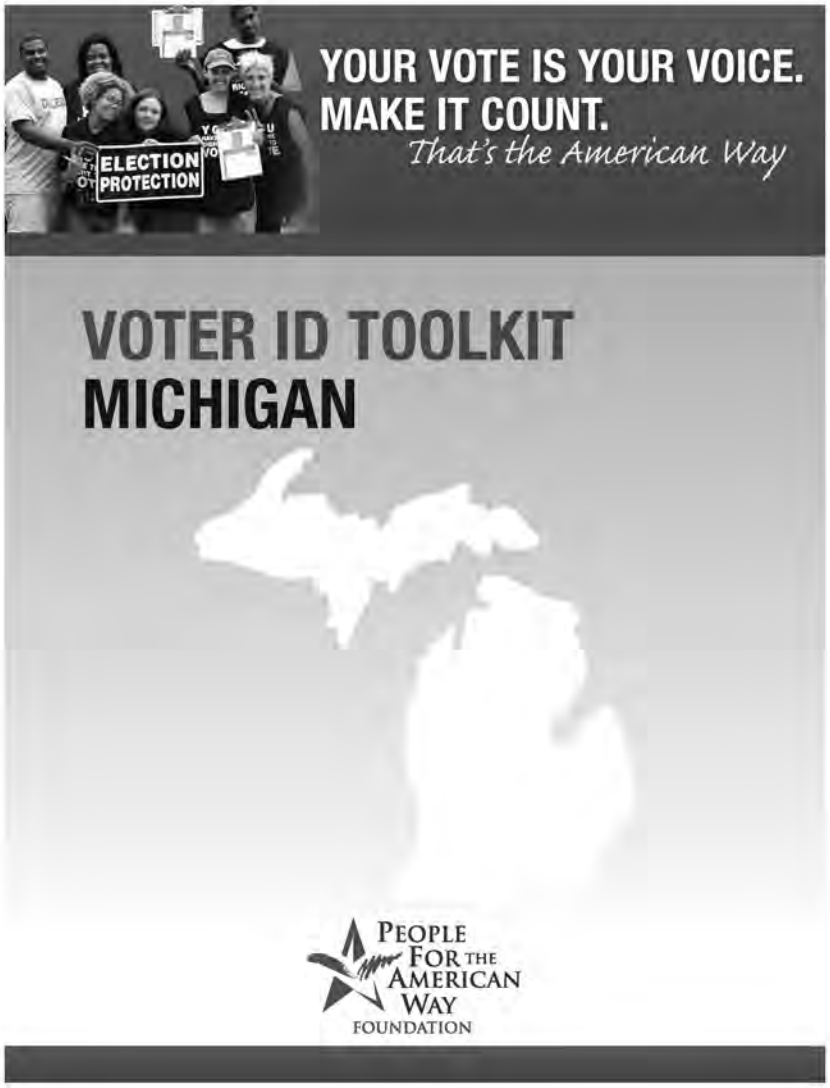

ELECTION PROTECTION
YOUR VOTE IS YOUR VOICE.
MAKE IT COUNT.
That's the American Way
VOTER ID TOOLKIT
MICHIGAN
PEOPLE FOR THE AMERICAN WAY FOUNDATION

TABLE OF CONTENTS

pg	
» 3	LETTER OF INTRODUCTION
» 5	GENERAL VOTER ID FLYER
» 7	SPREAD THE WORD
» 8	IMPORTANT DATES INFORMATION
» 10	IMPORTANT DATES FLYER
» 11	PEOPLE FOR THE AMERICAN WAY CONTACT INFORMATION
» 13	MICHIGAN COUNTY CLERK OFFICES DIRECTORY

MICHIGAN VOTER ID TOOLKIT

KATHRYN KOLBERT
President, People For the American Way

TANYA CLAY HOUSE
Director, Democracy Campaign

LETTER OF INTRODUCTION

DEAR CONCERNED LEADER,

Welcome and thank you for your commitment to the fight for fair elections!

By pledging to educate your community about the fundamental right to vote, you have taken a tremendous step towards fighting voter suppression in America. Committed activists from across the country, just like you, will be taking similar steps to ensure that thousands of Americans participate in the most fundamental part of our democracy. Voting is not just about electing a president or a congressman; it is also about protecting a number of rights and freedoms, including civil rights, free speech and religious liberty. Your work from here on out is of the utmost importance. To help you along the way we have gathered together a voter ID Toolkit with all the materials you will need to succeed!

We have seen the tragedy of what happens when the right to vote is not protected across the nation. In the 2004 election many Michigan voters experienced difficulty in voting due to new identification laws and misinformed poll workers. It is vital that people be made aware of the voter ID laws in Michigan so that no eligible voter is disenfranchised.

As extreme measures to suppress the right to vote become more prevalent, the leadership of activists like you is needed more and more. Most recently some states have passed harsh, restrictive voter ID laws that require government issued photo ID in order to vote. This poses extreme difficulty for many members of your community, especially low-income families, minorities and senior citizens, who don't drive or otherwise have a need for a driver's license or other government-issued identification.

LETTER OF INTRODUCTION

Fighting this uphill battle may seem daunting, but with the right partners, educating your community against these types of disenfranchisement can be achieved. Working with and in your community will be a rewarding and empowering experience so we hope you get to work now! Working on the ground to protect the right to vote, and the empowering feeling of educating your community is a fantastic way to affect change in your community! With the resources provided in this voter ID toolkit you will be well on your way to making a huge impact!

The responsibility of keeping your community informed and motivated is so important. That's why we've put this kit together for you! Inside you will find general information about your state's election laws, flyers to hand out to your community, and a detailed list of important voter registration and election dates to remember. You are not in this alone. We thank you for your commitment and wish you success in empowering your community for this election cycle!

YOURS IN SOLIDARITY,

MICHELE LAWRENCE JAWANDO

CAMPAIGN MANAGER OF ELECTION PROTECTION

PEOPLE FOR THE AMERICAN WAY FOUNDATION

The Democracy Campaign

MAKE SURE YOUR VOTE COUNTS!

If you are a registered Michigan voter, you MUST bring proper IDENTIFICATION with you to the polls on Tuesday, November 4, 2008!

The polls will be open from 7:00 a.m. to 8:00 p.m. on Election Day!

You MUST bring one of the following acceptable forms of photo ID:

- Michigan driver's license;
- Michigan personal ID card;
- Federal or state government-issued ID;
- United States passport;
- Military identification with photo;
- Tribal ID card with photo;
- Student ID with photo from a high school or an accredited institution of higher education

Don't have a photo ID?

Michigan law allows voters who do not bring or do not possess photo ID to vote like any other voter by signing an affidavit. This affidavit is a statement that asserts that you do not possess a photo ID.

Your vote is your voice. Make it count.

The Democracy Campaign

People For the American Way Foundation

SPREAD THE WORD ABOUT VOTER ID!

As the election approaches it is important to stay informed about the Michigan voter ID requirements at the polls so your voice can be heard. This year ALL voters must bring picture ID. Enclosed in this section of your Voter ID Toolkit are flyers that can be reproduced and distributed to members of your congregation and community! With this information we encourage you to begin organizing to ensure that everyone is prepared with proper identification on **Election Day: November 4, 2008.** The polls will be open from 7:00 am to 8:00pm on Election Day!

HOW TO DISTRIBUTE THE VOTER ID FLYERS:

The flyer included describes one of the most important requirements for voting in the state of Michigan - having a current form of photo ID. You can use the General voter ID flyer to spread the knowledge of voter ID requirements throughout your community. Listed on the flyers are the many alternate photo ID's one can use at the polls besides a Michigan issued driver's license.

Additionally, we have put together a flyer which emphasizes the important dates regarding registration and voting for Election Day 2008!

DON'T HAVE YOUR PHOTO ID ON ELECTION DAY?

If you are properly registered but you forgot your photo ID or simply do not posses a photo ID, you have the right to vote just like everyone else. Voters who do not bring photo ID to the polls will be asked to sign an affidavit that attests that he or she does not have a photo ID.

IMPORTANT DATES TO REMEMBER

While working to inform your congregation on Voter Identification requirements, there are a few important dates to remember and stress to your church and community members. The following are the dates you should be very familiar with.

AUGUST PRIMARY

JULY 7, 2008 – Last day to register for August primary. You can hand deliver the application to the city or county clerk's office by this date or if you mail it, it must be postmarked by Monday, July 7, 2008.

AUGUST 2, 2008, BY 2 P.M. – Voters who wish to receive an absentee ballot for the election must submit applications by 2 p.m., Saturday, August 2, 2008. Applications are available online at http://www.michigan.gov/documents/AbsentVoterBallot_105377_7.pdf.

AUGUST 4, 2008, BY 4 P.M. – Voters qualified to obtain an absentee ballot for the election may vote in person in clerk's office.

AUGUST 5, 2008

» **BY 4 P.M.** – In case of an emergency wherein you would be unable to vote in person on Election Day, someone may come to the clerk's office to submit a written application for an Emergency Ballot.

» **BY 8 P.M. - All** Absentee and Emergency Absentee ballots are due to the clerk's office. All in person voters must be in line or have voted by this time at their precinct.

NOVEMBER GENERAL ELECTION

OCTOBER 6, 2008 – Last day to register for November general election. You can hand deliver the application to the city or county clerk's office by this date or if you mail it, make sure it is postmarked by October 6, 2008.

NOVEMBER 1, 2008, BY 2 P.M.– Voters who wish to receive an absentee ballot for the election by mail must submit applications by this time. Applications are available online at http://www.michigan.gov/documents/AbsentVoterBallot_105377_7.pdf.

NOVEMBER 3, 2008, BY 4 P.M. – Voters qualified to obtain an absentee voter ballot for the election

IMPORTANT DATES

may vote in person in the clerk's office before this time.

NOVEMBER 4TH, 2008

» **BY 4 P.M.–** In case of an emergency wherein you would be unable to vote in person on Election Day, someone may come to the clerk's office to submit a written application for an Emergency Ballot on another's behalf.

» **BY 8 P.M.–** Absentee and Emergency Absentee ballots due at clerk's office. All in person voters must be in line or have voted by this time at their precinct.

IMPORTANT DATES

August Primary

JUL

7 **Last day to register** for August primary.

AUG

2 Voters who wish to receive an absentee ballot for the election by mail must submit applications by this time.

4 Voters qualified to obtain an absentee voter ballot for election may vote in person in clerk's office.

5 **ELECTION DAY!**

The polls will be open from 7:00am to 8:00pm on Election Day!

by 4pm Emergency Ballots due – In case of an emergency in the event that you would be unable to vote in person on Election Day, someone may come to the clerk's office to submit a written application for an Emergency Ballot.

by 8pm All Absentee and Emergency Absentee ballots are due to the clerk's office. All in-person voters must vote at their precinct.

November General Election

OCT

6 **Last day to register** for November general election. You can hand deliver the application or if you mail it, make sure it is post marked October 6, 2008.

NOV

1 Voters who wish to receive an absentee voter ballot for the election by mail must submit applications by this time.

3 Voters qualified to obtain an absentee voter ballot for the election may vote in person in clerk's office before this time.

4 **ELECTION DAY!**

The polls will be open from 7:00am to 8:00pm on Election Day!

by 4pm: In case of an emergency wherein you would be unable to vote in person on Election Day, someone may come to the clerk's office to submit a written application for an Emergency Ballot on another's behalf.

by 8pm: Absentee and Emergency Absentee ballots due at clerk's office. All in person voters must be in line or have voted by this time at their precinct.

People For the American Way Foundation

The Democracy Campaign

HELPFUL RESOURCES

PEOPLE FOR THE AMERICAN WAY FOUNDATION CONTACT INFORMATION

Enclosed is contact information for you to find additional resources and information. One of the primary sources is the Election Protection Coalition, which includes People For the American Way Foundation. You should use this information to receive further information about voter ID and voting rights.

Furthermore we have included contact information for the Election Incident Reporting System, now known as TEA (Total Election Awareness), that records and analyzes information about voting problems before, during, and after elections. This web based system is set up to record voting incidents; voters can report incidents by phone by calling 1 866 OUR VOTE. After the election the system is used to work with elected officials to fix flaws from the previous election and to shape federal law on elections. This hotline number should be spread widely to your community so that if there are problems during Election Day, trained volunteers or attorneys can provide immediate assistance.

People For the American Way Foundation is an organization that monitors the right wing and is dedicated to protecting the civil rights and civil liberties of all Americans through legislative and grassroots advocacy.

PEOPLE FOR THE AMERICAN WAY FOUNDATION
Phone Number: (202) 467-4999
Toll Free: 800-326-7329
Fax Number: (202) 293-2672
Email: pfaw@pfaw.org

KATHRYN KOLBERT
President

TANYA CLAY HOUSE
Director, Public Policy
Director, Democracy Campaign

MICHELE LAWRENCE JAWANDO
Campaign Manager of Election Protection
Legislative Counsel

ELECTION PROTECTION HOTLINE
1-866-OUR-VOTE
www.pfaw.org

THE DEMOCRACY CAMPAIGN
www.workingfordemocracy.org

HELPFUL RESOURCES

DEMOCRACY CAMPAIGN

A project of People For the American Way and People For the American Way Foundation, the Democracy Campaign comprises all of the voting rights work of PFAW, including federal and state legislative advocacy, Election Protection and other civic engagement activities within PFAW Foundation programs. The Democracy Campaign website provides comprehensive electoral information and resources.

The Democracy Campaign
http://www.workingfordemocracy.org/

Election Protection Hotline
1-866-OUR-VOTE
www.pfaw.org

THE CENTER FOR VOTING AND DEMOCRACY:

The Center is a nonprofit organization dedicated to fair elections where every vote counts and all voters are represented. As a catalyst for reform, they conduct research, analysis, education and advocacy to build understanding of and support for more democratic voting systems. You can find more information and resources at:
http://www.fairvote.org

GETVOTING411:

Getvoting411 is one of the most comprehensive listings of US federal, state, and local elections offices on the Internet. All 50 states are represented with hotlinks to state, county, and city elections offices. The site also leads you to a listing of federal agencies that provide election-related information.
http://www.getvoting411.us/elecnet/index.cfm

USELECTIONS.COM:

This site was created by Lauch3, LLC with the objective of launching a nonpartisan public service web site that provides a doorway to various informational sites and allows people to gain a better understanding of how the election process works.
http://www.uselections.com

VOTE411:

Sponsored by the League of Women Voters Education Fund (LWVEF) this web site provides 'one-stop-shop' information about elections across the country. It is possible to search for election information by state or topic, making this one of the most user-friendly resources.
http://www.vote411.org/

THE LEAGUE OF WOMEN VOTERS OF MICHIGAN

http://www.lwvmi.org/

PEOPLE FOR THE AMERICAN WAY FOUNDATION

The Democracy Campaign

MICHIGAN COUNTY CLERK OFFICES DIRECTORY

ADAMS
P. O. Box 308
Harrisville, 48740-0308

ALGER
101 Court St.
Munising, 49862-1196

ALLEGAN
113 Chestnut St.
Allegan, 49010-1350

ALPENA
720 Chisholm St.
Alpena, 49707-2488

ANTRIM
P.O. Box 520
Bellaire, 49615-0520

ARENAC
P.O. Box 747
Standish, 48658-0747

BARAGA
16 N. 3rd St.
L'anse, 49946-1085

BARRY
220 W. State St.
Hastings, 49058-1462

BAY
515 Center St.
Bay City, 48708-5994

BENZIE
P.O. Box 377
Beulah, 49617-0377

BERRIEN
811 Port St.
St. Joseph, 49085-1198

BRANCH
31 Division St.
Coldwater, 49036-1990

CALHOUN
315 W. Green St.
Marshall, 49068-1585

CASS
P.O. Box 355
Cassopolis, 49031-0355

CHARLEVOIX
203 Antrim St.
Charlevoix, 49720-1397

CHEBOYGAN
P.O. Box 70
Cheboygan, 49721-0070

CHIPPEWA
319 Court St.
Sault Ste Marie, 49783-2194

CLARE
P.O. Box 438
Harrison, 48625-0438

CLINTON
100 E. State St. Ste 2600
St. Johns, 48879

CRAWFORD
200 W. Michigan
Grayling, 49738-1798

DELTA
310 Ludington St.
Escanaba 49829-4057

DICKINSON
P.O. Box 609
Iron Mountain, 49801-0609

EATON
1045 Independence Blvd.
Charlotte, 48813-1095

EMMET
200 Division St.
Petoskey, 49770-2444

GENESEE
900 S. Saginaw
Flint 48502-1571

GLADWIN
401 W. Cedar Ave.
Gladwin, 49624-2088

GOGEBIC
200 N. Moore
Bessemer,49911-1052

GRAND TRAVERSE
400 Boardman Ave.
Traverse City, 49684-2577

GRATIOT
P.O. Drawer 437
Ithaca, 48847-0437

HILLSDALE
29 N. Howell St.
Hillsdale, 49242-1698

MICHIGAN COUNTY CLERK OFFICES DIRECTORY

HOUGHTON
401 E. Houghton Ave.
Houghton, 49931-2099

HURON
250 E. Huron Ave.
Bad Axe, 48413-1386

INGHAM
P.O. Box 179
Mason, 48854-0179

IONIA
100 Main St.
Ionia, 48846-1697

IOSCO
P.O. Box 838
Tawas City, 48764-0838

IRON
2 S 6th St.
Crystal Falls, 49920-1495

ISABELLA
200 N. Main St.
Mt Pleasant, 48858-2393

JACKSON
312 S. Jackson St.
Jackson, 49201-1315

KALAMAZOO
201 W. Kalamazoo Ave.
Kalamazoo, 49007-3777

KALKASKA
P.O. Box 10
Kalkaska, 49646-0010

KENT
300 Monroe NW.
Grand Rapids, 49503-2288

KEWEENAW
5095 4th St.
Eagle River, 49950-9624

LAKE
800 Tenth St. - Suite 200
Baldwin, 49304-7971

LAPEER
255 Clay St.
Lapeer, 48446-2298

LEELANAU
P.O. Box 467
Leland, 49654-0467

LENAWEE
425 N. Main St.
Adrian, 49221-2198

LIVINGSTON
200 E. Grand River
Howell, 48843-2399

LUCE
407 W. Harrie St.
Newberry, 49868-1299

MACKINAC
100 S. Marley St. Room 10
St. Ignace, 49781-1491

MACOMB
40 N. Main St.
Mt Clemens, 48043-5661

MANISTEE
415 3rd St.
Manistee, 49660-1606

MARQUETTE
234 W. Baraga Ave.
Marquette, 49855-4782

MASON
304 E. Ludington Ave.
Ludington, 49431-2121

MECOSTA
400 Elm St.
Big Rapids, 49307-1849

MENOMINEE
839 10th Ave.
Menominee, 49858-3000

MIDLAND
220 W. Ellsworth St.
Midland, 48640-5194

MISSAUKEE
P.O. Box 800
Lake City, 49651-0800

MONROE
106 E. 1St. St.
Monroe, 48161-2185

MONTCALM
P.O. Box 368
Stanton, 48888-0368

MONTMORENCY
P.O. Box 789
Atlanta, 49709-0789

PEOPLE FOR THE AMERICAN WAY FOUNDATION
The Democracy Campaign

MICHIGAN COUNTY CLERK OFFICES DIRECTORY

MUSKEGON
990 Terrace
Muskegon, 49442-3378

NEWAYGO
P.O. Box 885
White Cloud, 49349-0885

OAKLAND
1200 N. Telegraph
Pontiac, 48341-0413

OCEANA
100 State St., Suite 1
Hart, 49420

OGEMAW
806 W. Houghton Ave.
West Branch, 48661-1215

ONTONAGON
725 Greenland Rd.
Ontonagon, 49953-1492

OSCEOLA
301 W. Upton
Reed City, 49677-1149

OSCODA
P.O. Box 399
Mio, 48647-0399

OTSEGO
225 W. Main St.
Gaylord, 49735-1393

OTTAWA
414 Washington
Grand Haven, 49417-1494

PRESQUE ISLE
P.O. Box 110
Rogers City, 49779-0110

ROSCOMMON
500 Lake St.
Roscommon, 48653

SAGINAW
111 S. Michigan
Saginaw, 48602-2086

SANILAC
60 W. Sanilac
Sandusky, 48471-1094

SCHOOLCRAFT
300 Walnut
Manistique, 49854-1487

SHIAWASSEE
208 N. Shiawassee
Corunna 48817-1491

ST. CLAIR
201 McMorran Blvd.
Port Huron, 48060-4082

ST. JOSEPH
P.O. Box 189
Centreville, 49032-0189

TUSCOLA
440 N. State St.
Caro, 48723-1592

VAN BUREN
212 Paw Paw
Paw Paw, 49079-1496

WASHTENAW
P.O. Box 8645
Ann Arbor, 48107-8645

WAYNE
2 Woodward Ave, Room 502
Detroit, 48226

WEXFORD
437 E. Division
Cadillac, 49601-1905

PEOPLE
FOR THE
AMERICAN
WAY
FOUNDATION
The Democracy
Campaign

Advertisement

PRINTER FRIENDLY

URL: http://www.rollingstone.com/news/story/10432334/was_the_2004_election_stolen

Rollingstone.com

Back to Was the 2004 Election Stolen?

Was the 2004 Election Stolen?

Republicans prevented more than 350,000 voters in Ohio from casting ballots or having their votes counted -- enough to have put John Kerry in the White House.

ROBERT F. KENNEDY JR.

Posted Jun 01, 2006 5:02 PM

The complete article, with Web-only citations, follows. Talk and read about it in our National Affairs blog, or see exclusive documents, sources, charts and commentary.

ADVERTISEMENT

Like many Americans, I spent the evening of the 2004 election watching the returns on television and wondering how the exit polls, which predicted an overwhelming victory for John Kerry, had gotten it so wrong. By midnight, the official tallies showed a decisive lead for George Bush -- and the next day, lacking enough legal evidence to contest the results, Kerry conceded. Republicans derided anyone who expressed doubts about Bush's victory as nut cases in "tinfoil hats," while the national media, with few exceptions, did little to question the validity of the election. *The Washington Post* immediately dismissed allegations of fraud as "conspiracy theories,"(1) and *The New York Times* declared that "there is no evidence of vote theft or errors on a large scale."(2)

But despite the media blackout, indications continued to emerge that something deeply troubling had taken place in 2004. Nearly half of the 6 million American voters living abroad(3) never received their ballots -- or received them too late to vote(4) -- after the Pentagon unaccountably shut down a state-of-the-art Web site used to file overseas registrations.(5) A consulting firm called Sproul & Associates, which was hired by the Republican National Committee to register voters in six battleground states,(6) was discovered shredding Democratic registrations.(7) In New Mexico, which was decided by 5,988 votes,(8) malfunctioning machines mysteriously failed to properly register a presidential vote on more than 20,000 ballots.(9) Nationwide, according to the federal commission charged with implementing election reforms, as many as 1 million ballots were spoiled by faulty voting equipment -- roughly one for every 100 cast.(10)

The reports were especially disturbing in Ohio, the critical battleground state that clinched Bush's victory in the electoral college. Officials there purged tens of thousands of eligible voters from the rolls, neglected to process registration cards generated by Democratic voter drives, shortchanged Democratic precincts when they allocated voting machines and illegally derailed a recount that could have given Kerry the presidency. A precinct in an evangelical church in Miami

County recorded an impossibly high turnout of ninety-eight percent, while a polling place in inner-city Cleveland recorded an equally impossible turnout of only seven percent. In Warren County, GOP election officials even invented a nonexistent terrorist threat to bar the media from monitoring the official vote count.(11)

Any election, of course, will have anomalies. America's voting system is a messy patchwork of polling rules run mostly by county and city officials. "We didn't have one election for president in 2004," says Robert Pastor, who directs the Center for Democracy and Election Management at American University. "We didn't have fifty elections. We actually had 13,000 elections run by 13,000 independent, quasi-sovereign counties and municipalities."

But what is most anomalous about the irregularities in 2004 was their decidedly partisan bent: Almost without exception they hurt John Kerry and benefited George Bush. After carefully examining the evidence, I've become convinced that the president's party mounted a massive, coordinated campaign to subvert the will of the people in 2004. Across the country, Republican election officials and party stalwarts employed a wide range of illegal and unethical tactics to fix the election. A review of the available data reveals that in Ohio alone, at least 357,000 voters, the overwhelming majority of them Democratic, were prevented from casting ballots or did not have their votes counted in 2004(12) -- more than enough to shift the results of an election decided by 118,601 votes.(13) (See Ohio's Missing Votes) In what may be the single most astounding fact from the election, *one in every four* Ohio citizens who registered to vote in 2004 showed up at the polls only to discover that they were not listed on the rolls, thanks to GOP efforts to stem the unprecedented flood of Democrats eager to cast ballots.(14) And that doesn't even take into account the troubling evidence of outright fraud, which indicates that upwards of 80,000 votes for Kerry were counted instead for Bush. That alone is a swing of more than 160,000 votes -- enough to have put John Kerry in the White House.(15)

"It was terrible," says Sen. Christopher Dodd, who helped craft reforms in 2002 that were supposed to prevent such electoral abuses. "People waiting in line for twelve hours to cast their ballots, people not being allowed to vote because they were in the wrong precinct -- it was an outrage. In Ohio, you had a secretary of state who was determined to guarantee a Republican outcome. I'm terribly disheartened."

Indeed, the extent of the GOP's effort to rig the vote shocked even the most experienced observers of American elections. "Ohio was as dirty an election as America has ever seen," Lou Harris, the father of modern political polling, told me. "You look at the turnout and votes in individual precincts, compared to the historic patterns in those counties, and you can tell where the discrepancies are. They stand out like a sore thumb."

I. The Exit Polls

The first indication that something was gravely amiss on November 2nd, 2004, was the inexplicable discrepancies between exit polls and actual vote counts. Polls in thirty states weren't just off the mark -- they deviated to an extent that cannot be accounted for by their margin of error. In all but four states, the discrepancy favored President Bush.(16)

Over the past decades, exit polling has evolved into an exact science. Indeed, among pollsters and statisticians, such surveys are thought to be the most reliable. Unlike pre-election polls, in which voters are asked to predict their own behavior at some point in the future, exit polls ask voters leaving the voting booth to report an action they just executed. The results are exquisitely accurate: Exit polls in Germany, for example, have never missed the mark by more than three-tenths of one percent.(17) "Exit polls are almost never wrong," Dick Morris, a political consultant who has worked for both Republicans and Democrats, noted after the 2004 vote. Such surveys are "so reliable," he added, "that they are used as guides to the relative honesty of elections in Third World countries."(18) In 2003, vote tampering revealed by exit polling in the Republic of Georgia forced Eduard Shevardnadze to step down.(19) And in November 2004, exit polling in the Ukraine -- paid for by the Bush administration -- exposed election fraud that denied Viktor Yushchenko the presidency.(20)

But that same month, when exit polls revealed disturbing disparities in the U.S. election, the six media organizations that had commissioned the survey treated its very existence as an embarrassment. Instead of treating the discrepancies as a story meriting investigation, the networks scrubbed the offending results from their Web sites and substituted them with "corrected" numbers that had been weighted, retroactively, to match the official vote count. Rather than finding fault with the election results, the mainstream media preferred to dismiss the polls as flawed.(21)

"The people who ran the exit polling, and all those of us who were their clients, recognized that it was deeply flawed," says Tom Brokaw, who served as anchor for NBC News during the 2004 election. "They were really screwed up -- the old models just don't work anymore. I would not go on the air with them again."

In fact, the exit poll created for the 2004 election was designed to be the most reliable voter survey in history. The six

news organizations -- running the ideological gamut from CBS to Fox News -- retained Edison Media Research and Mitofsky International,(22) whose principal, Warren Mitofsky, pioneered the exit poll for CBS in 1967(23) and is widely credited with assuring the credibility of Mexico's elections in 1994.(24) For its nationwide poll, Edison/Mitofsky selected a random subsample of 12,219 voters(25) -- approximately six times larger than those normally used in national polls(26) -- driving the margin of error down to approximately plus or minus one percent.(27)

On the evening of the vote, reporters at each of the major networks were briefed by pollsters at 7:54 p.m. Kerry, they were informed, had an insurmountable lead and would win by a rout: at least 309 electoral votes to Bush's 174, with fifty-five too close to call.(28) In London, Prime Minister Tony Blair went to bed contemplating his relationship with President-elect Kerry.(29)

As the last polling stations closed on the West Coast, exit polls showed Kerry ahead in ten of eleven battleground states -- including commanding leads in Ohio and Florida -- and winning by a million and a half votes nationally. The exit polls even showed Kerry breathing down Bush's neck in supposed GOP strongholds Virginia and North Carolina.(30) Against these numbers, the statistical likelihood of Bush winning was less than one in 450,000.(31) "Either the exit polls, by and large, are completely wrong," a Fox News analyst declared, "or George Bush loses."(32)

But as the evening progressed, official tallies began to show implausible disparities -- as much as 9.5 percent -- with the exit polls. In ten of the eleven battleground states, the tallied margins departed from what the polls had predicted. In every case, the shift favored Bush. Based on exit polls, CNN had predicted Kerry defeating Bush in Ohio by a margin of 4.2 percentage points. Instead, election results showed Bush winning the state by 2.5 percent. Bush also tallied 6.5 percent more than the polls had predicted in Pennsylvania, and 4.9 percent more in Florida.(33)

According to Steven F. Freeman, a visiting scholar at the University of Pennsylvania who specializes in research methodology, the odds against all three of those shifts occurring in concert are one in 660,000. "As much as we can say in sound science that something is impossible," he says, "it is impossible that the discrepancies between predicted and actual vote count in the three critical battleground states of the 2004 election could have been due to chance or random error." (See The Tale of the Exit Polls)

Puzzled by the discrepancies, Freeman laboriously examined the raw polling data released by Edison/Mitofsky in January 2005. "I'm not even political -- I despise the Democrats," he says. "I'm a survey expert. I got into this because I was mystified about how the exit polls could have been so wrong." In his forthcoming book, *Was the 2004 Presidential Election Stolen? Exit Polls, Election Fraud, and the Official Count*, Freeman lays out a statistical analysis of the polls that is deeply troubling.

In its official postmortem report issued two months after the election, Edison/Mitofsky was unable to identify any flaw in its methodology -- so the pollsters, in essence, invented one for the electorate. According to Mitofsky, Bush partisans were simply disinclined to talk to exit pollsters on November 2nd(34) -- displaying a heretofore unknown and undocumented aversion that skewed the polls in Kerry's favor by a margin of 6.5 percent nationwide.(35)

Industry peers didn't buy it. John Zogby, one of the nation's leading pollsters, told me that Mitofsky's "reluctant responder" hypothesis is "preposterous."(36) Even Mitofsky, in his official report, underscored the hollowness of his theory: "It is difficult to pinpoint precisely the reasons that, in general, Kerry voters were more likely to participate in the exit polls than Bush voters."(37)

Now, thanks to careful examination of Mitofsky's own data by Freeman and a team of eight researchers, we can say conclusively that the theory is dead wrong. In fact it was *Democrats*, not Republicans, who were more disinclined to answer pollsters' questions on Election Day. In Bush strongholds, Freeman and the other researchers found that fifty-six percent of voters completed the exit survey -- compared to only fifty-three percent in Kerry strongholds.(38) "The data presented to support the claim not only fails to substantiate it," observes Freeman, "but actually contradicts it."

What's more, Freeman found, the greatest disparities between exit polls and the official vote count came in Republican strongholds. In precincts where Bush received at least eighty percent of the vote, the exit polls were off by an average of ten percent. By contrast, in precincts where Kerry dominated by eighty percent or more, the exit polls were accurate to within three tenths of one percent -- a pattern that suggests Republican election officials stuffed the ballot box in Bush country.(39)

"When you look at the numbers, there is a tremendous amount of data that supports the supposition of election fraud," concludes Freeman. "The discrepancies are higher in battleground states, higher where there were Republican

governors, higher in states with greater proportions of African-American communities and higher in states where there were the most Election Day complaints. All these are strong indicators of fraud -- and yet this supposition has been utterly ignored by the press and, oddly, by the Democratic Party."

The evidence is especially strong in Ohio. In January, a team of mathematicians from the National Election Data Archive, a nonpartisan watchdog group, compared the state's exit polls against the certified vote count in each of the forty-nine precincts polled by Edison/Mitofsky. In twenty-two of those precincts -- nearly half of those polled -- they discovered results that differed widely from the official tally. Once again -- against all odds -- the widespread discrepancies were stacked massively in Bush's favor: In only two of the suspect twenty-two precincts did the disparity benefit Kerry. The wildest discrepancy came from the precinct Mitofsky numbered "27," in order to protect the anonymity of those surveyed. According to the exit poll, Kerry should have received sixty-seven percent of the vote in this precinct. Yet the certified tally gave him only thirty-eight percent. The statistical odds against such a variance are just shy of one in 3 billion.(40)

Such results, according to the archive, provide "virtually irrefutable evidence of vote miscount." The discrepancies, the experts add, "are consistent with the hypothesis that Kerry would have won Ohio's electoral votes if Ohio's official vote counts had accurately reflected voter intent."(41) According to Ron Baiman, vice president of the archive and a public policy analyst at Loyola University in Chicago, "No rigorous statistical explanation" can explain the "completely nonrandom" disparities that almost uniformly benefited Bush. The final results, he adds, are "completely consistent with election fraud -- specifically vote shifting."

II. The Partisan Official

No state was more important in the 2004 election than Ohio. The state has been key to every Republican presidential victory since Abraham Lincoln's, and both parties overwhelmed the state with television ads, field organizers and volunteers in an effort to register new voters and energize old ones. Bush and Kerry traveled to Ohio a total of forty-nine times during the campaign -- more than to any other state.(42)

But in the battle for Ohio, Republicans had a distinct advantage: The man in charge of the counting was Kenneth Blackwell, the co-chair of President Bush's re-election committee.(43) As Ohio's secretary of state, Blackwell had broad powers to interpret and implement state and federal election laws -- setting standards for everything from the processing of voter registration to the conduct of official recounts.(44) And as Bush's re-election chair in Ohio, he had a powerful motivation to rig the rules for his candidate. Blackwell, in fact, served as the "principal electoral system adviser" for Bush during the 2000 recount in Florida,(45) where he witnessed firsthand the success of his counterpart Katherine Harris, the Florida secretary of state who co-chaired Bush's campaign there.(46)

Blackwell -- now the Republican candidate for governor of Ohio(47) -- is well-known in the state as a fierce partisan eager to rise in the GOP. An outspoken leader of Ohio's right-wing fundamentalists, he opposes abortion even in cases of rape(48) and was the chief cheerleader for the anti-gay-marriage amendment that Republicans employed to spark turnout in rural counties(49). He has openly denounced Kerry as "an unapologetic liberal Democrat,"(50) and during the 2004 election he used his official powers to disenfranchise hundreds of thousands of Ohio citizens in Democratic strongholds. In a ruling issued two weeks before the election, a federal judge rebuked Blackwell for seeking to "accomplish the same result in Ohio in 2004 that occurred in Florida in 2000."(51)

"The secretary of state is supposed to administer elections -- not throw them," says Rep. Dennis Kucinich, a Democrat from Cleveland who has dealt with Blackwell for years. "The election in Ohio in 2004 stands out as an example of how, under color of law, a state election official can frustrate the exercise of the right to vote."

The most extensive investigation of what happened in Ohio was conducted by Rep. John Conyers, the ranking Democrat on the House Judiciary Committee.(52) Frustrated by his party's failure to follow up on the widespread evidence of voter intimidation and fraud, Conyers and the committee's minority staff held public hearings in Ohio, where they looked into more than 50,000 complaints from voters.(53) In January 2005, Conyers issued a detailed report that outlined "massive and unprecedented voter irregularities and anomalies in Ohio." The problems, the report concludes, were "caused by intentional misconduct and illegal behavior, much of it involving Secretary of State J. Kenneth Blackwell."(54)

"Blackwell made Katherine Harris look like a cupcake," Conyers told me. "He saw his role as limiting the participation of Democratic voters. We had hearings in Columbus for two days. We could have stayed two weeks, the level of fury was so high. Thousands of people wanted to testify. Nothing like this had ever happened to them before."

When ROLLING STONE confronted Blackwell about his overtly partisan attempts to subvert the election, he dismissed

any such claim as "silly on its face." Ohio, he insisted in a telephone interview, set a "gold standard" for electoral fairness. In fact, his campaign to subvert the will of the voters had begun long before Election Day. Instead of welcoming the avalanche of citizen involvement sparked by the campaign, Blackwell permitted election officials in Cleveland, Cincinnati and Toledo to conduct a massive purge of their voter rolls, summarily expunging the names of more than 300,000 voters who had failed to cast ballots in the previous two national elections.(55) In Cleveland, which went five-to-one for Kerry, nearly one in four voters were wiped from the rolls between 2000 and 2004.(56)

There were legitimate reasons to clean up voting lists: Many of the names undoubtedly belonged to people who had moved or died. But thousands more were duly registered voters who were deprived of their constitutional right to vote -- often without any notification -- simply because they had decided not to go to the polls in prior elections.(57) In Cleveland's precinct 6C, where more than half the voters on the rolls were deleted,(58) turnout was only 7.1 percent(59) -- the lowest in the state.

According to the Conyers report, improper purging "likely disenfranchised tens of thousands of voters statewide."(60) If only one in ten of the 300,000 purged voters showed up on Election Day -- a conservative estimate, according to election scholars -- that is 30,000 citizens who were unfairly denied the opportunity to cast ballots.

III. The Strike Force

In the months leading up to the election, Ohio was in the midst of the biggest registration drive in its history. Tens of thousands of volunteers and paid political operatives from both parties canvassed the state, racing to register new voters in advance of the October 4th deadline. To those on the ground, it was clear that Democrats were outpacing their Republican counterparts: A *New York Times* analysis before the election found that new registrations in traditional Democratic strongholds were up 250 percent, compared to only twenty-five percent in Republican-leaning counties.(61) "The Democrats have been beating the pants off us in the air and on the ground," a GOP county official in Columbus confessed to *The Washington Times*.(62)

To stem the tide of new registrations, the Republican National Committee and the Ohio Republican Party attempted to knock tens of thousands of predominantly minority and urban voters off the rolls through illegal mailings known in electioneering jargon as "caging." During the Eighties, after the GOP used such mailings to disenfranchise nearly 76,000 black voters in New Jersey and Louisiana, it was forced to sign two separate court orders agreeing to abstain from caging.(63) But during the summer of 2004, the GOP targeted minority voters in Ohio by zip code, sending registered letters to more than 200,000 newly registered voters(64) in sixty-five counties.(65) On October 22nd, a mere eleven days before the election, Ohio Republican Party Chairman Bob Bennett -- who also chairs the board of elections in Cuyahoga County -- sought to invalidate the registrations of 35,427 voters who had refused to sign for the letters or whose mail came back as undeliverable.(66) Almost half of the challenged voters were from Democratic strongholds in and around Cleveland.(67)

There were plenty of valid reasons that voters had failed to respond to the mailings: The list included people who couldn't sign for the letters because they were serving in the U.S. military, college students whose school and home addresses differed,(68) and more than 1,000 homeless people who had no permanent mailing address.(69) But the undeliverable mail, Bennett claimed, proved the new registrations were fraudulent.

By law, each voter was supposed to receive a hearing before being stricken from the rolls.(70) Instead, in the week before the election, kangaroo courts were rapidly set up across the state at Blackwell's direction that would inevitably disenfranchise thousands of voters at a time(71) -- a process that one Democratic election official in Toledo likened to an "inquisition."(72) Not that anyone was given a chance to actually show up and defend their right to vote: Notices to challenged voters were not only sent out impossibly late in the process, they were *mailed to the very addresses that the Republicans contended were faulty*.(73) Adding to the atmosphere of intimidation, sheriff's detectives in Sandusky County were dispatched to the homes of challenged voters to investigate the GOP's claims of fraud.(74)

Next page

--

1) Manual Roig-Franzia and Dan Keating, "Latest Conspiracy Theory -- Kerry Won -- Hits the Ether," *The Washington Post*, November 11, 2004.

2) The New York Times Editorial Desk, "About Those Election Results," *The New York Times*, November 14, 2004.

3) United States Department of Defense, August 6, 2004.

4) Overseas Vote Foundation, "2004 Post Election Survey Results," June 2005, page 11.

5) Jennifer Joan Lee, "Pentagon Blocks Site for Voters Outside U.S.," *International Herald Tribune*, September 20, 2004.

6) Meg Landers, "Librarian Bares Possible Voter Registration Dodge," *Mail Tribune* (Jackson County, OR), September 21, 2004.

7) Mark Brunswick and Pat Doyle, "Voter Registration; 3 former workers: Firm paid pro-Bush bonuses; One said he was told his job was to bring back cards for GOP voters," *Star Tribune* (Minneapolis, MN), October 27, 2004.

8) Federal Election Commission, Federal Elections 2004: Election Results for the U.S. President.

9) Ellen Theisen and Warren Stewart, Summary Report on New Mexico State Election Data, January 4, 2005, pg. 2

James W. Bronsan, "In 2004, New Mexico Worst at Counting Votes," Scripps Howard News Service, December 22, 2004. 10) "A Summary of the 2004 Election Day Survey; How We Voted: People, Ballots & Polling Places; A Report to the American People by the United States Election Assistance Commission", September 2005, pg. 10.

11) Facts mentioned in this paragraph are subsequently cited throughout the story.

12) See "Ohio's Missing Votes"

13) Federal Election Commission, Federal Elections 2004: Election Results for the U.S. President.

14) Democratic National Committee, Voting Rights Institute, "Democracy at Risk: The 2004 Election in Ohio", June 22, 2005. Page 5

15) See "VIII. Rural Counties."

16) Evaluation of Edison/Mitofsky Election System 2004" prepared by Edison Media Research and Mitofksy International for the National Election Pool (NEP), January 19, 2005, Page 3

17) This refers to data for German national elections in 1994, 1998 and 2002, previously cited by Steven F. Freeman.

18) Dick Morris, "Those Faulty Exit Polls Were Sabotage," *The Hill*, November 4, 2004.

19) Martin Plissner, "Exit Polls to Protect the Vote," *The New York Times*, October 17, 2004.

20) Matt Kelley, "U.S. Money has Helped Opposition in Ukraine," Associated Press, December 11, 2004.

Daniel Williams, "Court Rejects Ukraine Vote; Justices Cite Massive Fraud in Runoff, Set New Election," *The Washington Post*, December 4, 2004.

21) Steve Freeman and Joel Bleifuss, "Was the 2004 Presidential Election Stolen? Exit Polls, Election Fraud, and the Official Count," *Seven Stories Press*, July 2006, Page 102.

22) Evaluation of Edison/Mitofsky Election System 2004; prepared by Edison Media Research and Mitofsky International for the National Election Pool (NEP), January 19, 2005, Page 3.

23) Mitofsky International

24) Tim Golden, "Election Near, Mexicans Question the Questioners," *The New York Times*, August 10, 1994.

25) Evaluation of Edison/Mitofsky Election System 2004; prepared by Edison Media Research and Mitofsky International for the National Election Pool (NEP), January 19, 2005, Page 59.

26) Jonathan D. Simon, J.D., and Ron P. Baiman, Ph.D., "The 2004 Presidential Election: Who Won the Popular Vote? An Examination of the Comparative Validity of Exit Poll and Vote Count Data." FreePress.org, December 29, 2004, P. 9

27) Analysis by Steven F. Freeman.

28) Freeman and Bleifuss, pg. 134

29) Jim Rutenberg, "Report Says Problems Led to Skewing Survey Data," *The New York Times*, November 5, 2004.

30) Freeman and Bleifuss, pg. 134

31) Analysis of the 2004 Presidential Election Exit Poll Discrepancies. U.S. Count Votes. Baiman R, et al. March 31, 2005. Page 3.

32) Notes From Campaign Trail, Fox News Network, Live Event, 8:00 p.m. EST, November 2, 2004.

33) Freeman and Bleifuss, pg. 101-102

34) Evaluation of Edison/Mitofsky Election System 2004; prepared by Edison Media Research and Mitofsky International for the National Election Pool (NEP), January 19, 2005, Page 4.

35) Freeman and Bleifuss, pg. 120.

36) Interview with John Zogby

37) Evaluation of Edison/Mitofsky Election System 2004; prepared by Edison Media Research and Mitofsky International for the National Election Pool (NEP), January 19, 2005, Page 4.

38) Freeman and Bleifuss, pg. 128.

39) Freeman and Bleifuss, pg. 130.

40) "The Gun is Smoking: 2004 Ohio Precinct-level Exit Poll Data Show Virtually Irrefutable Evidence of Vote Miscount," U.S. Count Votes, National Election Data Archive, January 23, 2006.

41) "The Gun is Smoking," pg. 16.

42) *The Washington Post*, "Charting the Campaign: Top Five Most Visited States," November 2, 2004.

43) John McCarthy, "Nearly a Month Later, Ohio Fight Goes On," Associated Press Online, November 30, 2004.

44) Ohio Revised Code, 3501.04, Chief Election Officer"

45) Joe Hallett, "Blackwell Joins GOP's Spin Team," *The Columbus Dispatch*, November 30, 2004.

46) Gary Fineout, "Records Indicate Harris on Defense," *Ledger* (Lakeland, Florida), November 18, 2000.

47) http://www.kenblackwell.com/

48) Joe Hallett, "Governor; Aggressive First Round Culminates Tuesday," *Columbus Dispatch*, April 30, 2006.

49) Sandy Theis, "Blackwell Accused of Breaking Law by Pushing Same-Sex Marriage Ban," *Plain Dealer* (Cleveland, OH), October 29, 2004.

50) Raw Story, "Republican Ohio Secretary of State Boasts About Delivering Ohio to Bush."

51) In the United States District Court For the Northern District of Ohio Northern Division, The Sandusky County Democratic Party et al. v. J. Kenneth Blackwell, Case No. 3:04CV7582, Page 8.

52) Preserving Democracy: What Went Wrong in Ohio, Status Report of the House Judiciary Committee Democratic Staff (Rep. John Conyers, Jr.), January 5, 2005.

53) Preserving Democracy, pg. 8.

54) Preserving Democracy, pg. 4.

55) The board of elections in Cuyahoga, Franklin and Hamilton counties.

56) Analysis by Richard Hayes Phillips, a voting rights advocate.

57) Fritz Wenzel, "Purging of Rolls, Confusion Anger Voters; 41% of Nov. 2 Provisional Ballots Axed in Lucas County,"

Toledo Blade, January 9, 2005.

58) Analysis by Hayes Phillips.

59) Cuyahoga County Board of Elections

60) Preserving Democracy, pg. 6.

61) Ford Fessenden, "A Big Increase of New Voters in Swing States," *The New York Times*, September 26, 2004.

62) Ralph Z. Hallow, "Republicans Go 'Under the Radar' in Rural Ohio," *The Washington Times*, October 28, 2004.

63) Jo Becker, "GOP Challenging Voter Registrations," *The Washington Post*, October 29, 2004.

64) Janet Babin, "Voter Registrations Challenged in Ohio," NPR, All Things Considered, October 28, 2004.

65) In the United States District Court for the Southern District of Ohio, Western Division, Amy Miller et al. v. J. Kenneth Blackwell, Case no. C-1-04-735, Page 2.

66) Sandy Theis, "Fraud-Busters Busted; GOP's Blanket Challenge Backfires in a Big Way," *Plain Dealer*, October 31, 2004.

67) Daniel Tokaji, "Early Returns on Election Reform," *George Washington Law Review*, Vol. 74, 2005, page 1235

68) Sandy Theis, "Fraud-Busters Busted; GOP's Blanket Challenge Backfires in a Big Way," *Plain Dealer*, October 31, 2004.

69) Andrew Welsh-Huggins, "Out of Country, Off Beaten Path; Reason for Voting Challenges Vary," *Plain Dealer* (Cleveland, OH), October 27, 2004.

70) Ohio Revised Code; 3505.19

71) Directive No. 2004-44 from J. Kenneth Blackwell, Ohio Sec'y of State, to All County Boards of Elections Members, Directors, and Deputy Directors 1 (Oct. 26, 2004).

72) Fritz Wenzel, "Challenges Filed Against 931 Lucas County Voters," *Toledo Blade*, October 27, 2004.

73) In the United States District Court for the Southern District of Ohio, Western Division, Amy Miller et al. v. J. Kenneth Blackwell, Case no. C-1-04-735, Page 4.

74) LaRaye Brown, "Elections Board Plans Hearing For Challenges," *The News Messenger*, October 26, 2004.

"I'm afraid this is going to scare these people half to death, and they are never going to show up on Election Day," Barb Tuckerman, director of the Sandusky Board of Elections, told local reporters. "Many of them are young people who have registered for the first time. I've called some of these people, and they are perfectly legitimate."(75)

ADVERTISEMENT

On October 27th, ruling that the effort likely violated both the "constitutional right to due process and constitutional right to vote," U.S. District Judge Susan Dlott put a halt to the GOP challenge(76) -- but not before tens of thousands of new voters received notices claiming they were improperly registered. Some election officials in the state illegally ignored Dlott's ruling, stripping hundreds of voters from the rolls.(77) In Columbus and elsewhere, challenged registrants were never notified that the court had cleared them to vote.

On October 29th, a federal judge found that the Republican Party had violated the court orders from the Eighties that barred it from caging. "The return of mail does not implicate

fraud," the court affirmed,(78) and the disenfranchisement effort illegally targeted "precincts where minority voters predominate, interfering with and discouraging voters from voting in those districts."(79) Nor were such caging efforts limited to Ohio: The GOP also targeted hundreds of thousands of urban voters in the battleground states of Florida,(80) Pennsylvania(81) and Wisconsin.(82)

Republicans in Ohio also worked to deny the vote to citizens who had served jail time for felonies. Although rehabilitated prisoners are entitled to vote in Ohio, election officials in Cincinnati demanded that former convicts get a judge to sign off before they could register to vote.(83) In case they didn't get the message, Republican operatives turned to intimidation. According to the Conyers report, a team of twenty-five GOP volunteers calling themselves the Mighty Texas Strike Force holed up at the Holiday Inn in Columbus a day before the election, around the corner from the headquarters of the Ohio Republican Party -- which paid for their hotel rooms. The men were overheard by a hotel worker "using pay phones to make intimidating calls to likely voters" and threatening former convicts with jail time if they tried to cast ballots.(84)

This was no freelance operation. The Strike Force -- an offshoot of the Republican National Committee(85) -- was part of a team of more than 1,500 volunteers from Texas who were deployed to battleground states, usually in teams of ten. Their leader was Pat Oxford, (86) a Houston lawyer who managed Bush's legal defense team in 2000 in Florida,(87) where he warmly praised the efforts of a mob that stormed the Miami-Dade County election offices and halted the recount. It was later revealed that those involved in the "Brooks Brothers Riot" were not angry Floridians but paid GOP staffers, many of them flown in from out of state.(88) Photos of the protest show that one of the "rioters" was Joel Kaplan, who has just taken the place of Karl Rove at the White House, where he now directs the president's policy operations.(89)

IV. Barriers to Registration

To further monkey-wrench the process he was bound by law to safeguard, Blackwell cited an arcane elections regulation to make it harder to register new voters. In a now-infamous decree, Blackwell announced on September 7th -- less than a month before the filing deadline -- that election officials would process registration forms only if they were printed on eighty-pound unwaxed white paper stock, similar to a typical postcard. Justifying his decision to ROLLING STONE, Blackwell portrayed it as an attempt to protect voters: "The postal service had recommended to us that we establish a heavy enough paper-weight standard that we not disenfranchise voters by having their registration form damaged by postal equipment." Yet Blackwell's order also applied to registrations delivered in person to election offices. He further specified that any valid registration cards printed on lesser paper stock that miraculously survived the shredding gauntlet at the post office were not to be processed; instead, they were to be treated as *applications* for a registration form, requiring election boards to send out a brand-new card.(90)

Blackwell's directive clearly violated the Voting Rights Act, which stipulates that no one may be denied the right to vote because of a registration error that "is not material in determining whether such individual is qualified under state law to vote."(91) The decision immediately threw registration efforts into chaos. Local newspapers that had printed registration forms in their pages saw their efforts invalidated.(92) Delaware County posted a notice online saying it could no longer accept its own registration forms.(93) Even Blackwell couldn't follow the protocol: *The Columbus Dispatch* reported that his own staff distributed registration forms on lighter-weight paper that was illegal under his rule. Under the threat of court action, Blackwell ultimately revoked his order on September 28th -- six days before the registration deadline.(94)

But by then, the damage was done. Election boards across the state, already understaffed and backlogged with registration forms, were unable to process them all in time. According to a statistical analysis conducted in May by the nonpartisan Greater Cleveland Voter Coalition, 16,000 voters in and around the city were disenfranchised because of data-entry errors by election officials,(95) and another 15,000 lost the right to vote due to largely inconsequential omissions on their registration cards.(96) Statewide, the study concludes, a total of 72,000 voters were disenfranchised through avoidable registration errors -- one percent of all voters in an election decided by barely two percent.(97)

Despite the widespread problems, Blackwell authorized only one investigation of registration errors after the election -- in Toledo -- but the report by his own inspectors offers a disturbing snapshot of the malfeasance and incompetence that plagued the entire state.(98) The top elections official in Toledo was a partisan in the Blackwell mold: Bernadette Noe, who chaired both the county board of elections and the county Republican Party.(99) The GOP post was previously held by her husband, Tom Noe,(100) who currently faces felony charges for embezzling state funds and illegally laundering $45,400 of his own money through intermediaries to the Bush campaign.(101)

State inspectors who investigated the elections operation in Toledo discovered "areas of grave concern."(102) With less than a month to go before the election, Bernadette Noe and her board had yet to process 20,000 voter registration cards.(103) Board officials arbitrarily decided that mail-in cards (mostly from the Republican suburbs) would be processed first, while registrations dropped off at the board's office (the fruit of intensive Democratic registration drives in the city) would be processed last.(104) When a grass-roots group called Project Vote delivered a batch of nearly 10,000 cards just before the October 4th deadline, an elections official casually remarked, "We may not get to them."(105) The same official then instructed employees to date-stamp an entire box containing thousands of forms, rather than marking each individual card, as required by law.(106) When the box was opened, officials had no way of confirming that the forms were filed prior to the deadline -- an error, state inspectors concluded, that could have disenfranchised "several thousand" voters from Democratic strongholds.(107)

The most troubling incident uncovered by the investigation was Noe's decision to allow Republican partisans behind the counter in the board of elections office to make photocopies of postcards sent to confirm voter registrations(108) -- records that could have been used in the GOP's caging efforts. On their second day in the office, the operatives were caught by an elections official tampering with the documents.(109) Investigators slammed the elections board for "a series of egregious blunders" that caused "the destruction, mutilation and damage of public records."(110)

On Election Day, Noe sent a team of Republican volunteers to the county warehouse where blank ballots were kept out in the open, "with no security measures in place."(111) The state's assistant director of elections, who just happened to be observing the ballot distribution, demanded they leave. The GOP operatives refused and ultimately had to be turned away by police.(112)

In April 2005, Noe and the entire Board of Elections were forced to resign. But once again, the damage was done. At a "Victory 2004" rally held in Toledo four days before the election, President Bush himself singled out a pair of "grass-roots" activists for special praise: "I want to thank my friends Bernadette Noe and Tom Noe for their leadership in Lucas County."(113)

V. "The Wrong Pew"

In one of his most effective maneuvers, Blackwell prevented thousands of voters from receiving provisional ballots on Election Day. The fail-safe ballots were mandated in 2002, when Congress passed a package of reforms called the Help America Vote Act. This would prevent a repeat of the most egregious injustice in the 2000 election, when officials in Florida barred thousands of lawfully registered minority voters from the polls because their names didn't appear on flawed precinct rolls. Under the law, would-be voters whose registration is questioned at the polls must be allowed to cast provisional ballots that can be counted after the election if the voter's registration proves valid.(114)

"Provisional ballots were supposed to be this great movement forward," says Tova Andrea Wang, an elections expert who served with ex-presidents Jimmy Carter and Gerald Ford on the commission that laid the groundwork for the Help America Vote Act. "But then different states erected barriers, and this new right became totally eviscerated."

In Ohio, Blackwell worked from the beginning to curtail the availability of provisional ballots. (The ballots are most often used to protect voters in heavily Democratic urban areas who move often, creating more opportunities for data-entry errors by election boards.) Six weeks before the vote, Blackwell illegally decreed that poll workers should make on-the-spot judgments as to whether or not a voter lived in the precinct, and provide provisional ballots only to those deemed eligible.(115) When the ruling was challenged in federal court, Judge James Carr could barely contain his anger. The very purpose of the Help America Vote Act, he ruled, was to make provisional ballots available to voters told by precinct workers that they were ineligible: "By not even mentioning this group -- the primary beneficiaries of HAVA's provisional-voting provisions -- Blackwell apparently seeks to accomplish the same result in Ohio in 2004 that occurred in Florida in 2000."(116)

But instead of complying with the judge's order to expand provisional balloting, Blackwell insisted that Carr was usurping his power as secretary of state and made a speech in which he compared himself to Mohandas Gandhi, Martin Luther King Jr. and the apostle Paul -- saying that he'd rather go to jail than follow federal law.(117) The Sixth Circuit Court of Appeals upheld Carr's ruling on October 23rd -- but the confusion over the issue still caused untold numbers of voters across the state to be illegally turned away at the polls on Election Day without being offered provisional ballots.(118) A federal judge also invalidated a decree by Blackwell that denied provisional ballots to absentee voters who were never sent their ballots in the mail. But that ruling did not come down until after 3 p.m. on the day of the election, and likely failed to filter down to the precinct level at all -- denying the franchise to even more eligible voters.(119)

We will never know for certain how many voters in Ohio were denied ballots by Blackwell's two illegal orders. But it is possible to put a fairly precise number on those turned away by his most disastrous directive. Traditionally, anyone in Ohio who reported to a polling station in their county could obtain a provisional ballot. But Blackwell decided to toss out the ballots of anyone who showed up at the wrong precinct -- a move guaranteed to disenfranchise Democrats who live in urban areas crowded with multiple polling places. On October 14th, Judge Carr overruled the order, but Blackwell appealed.(120) In court, he was supported by his friend and campaign contributor Tom Noe, who joined the case as an intervenor on behalf of the secretary of state.(121) He also enjoyed the backing of Attorney General John Ashcroft, who filed an amicus brief in support of Blackwell's position -- marking the first time in American history that the Justice Department had gone to court to block the right of voters to vote.(122) The Sixth Circuit, stacked with four judges appointed by George W. Bush, sided with Blackwell.(123)

Blackwell insists that his decision kept the election clean. "If we had allowed this notion of ?voters without borders' to exist," he says, "it would have opened the door to massive fraud." But even Republicans were shocked by the move. DeForest Soaries, the GOP chairman of the Election Assistance Commission -- the federal agency set up to implement the Help America Vote Act -- upbraided Blackwell, saying that the commission disagreed with his decision to deny ballots to voters who showed up at the wrong precinct. "The purpose of provisional ballots is to not turn anyone away from the polls," Soaries explained. "We want as many votes to count as possible."(124)

The decision left hundreds of thousands of voters in predominantly Democratic counties to navigate the state's bewildering array of 11,366 precincts, whose boundaries had been redrawn just prior to the election.(125) To further compound their confusion, the new precinct lines were misidentified on the secretary of state's own Web site, which was months out of date on Election Day. Many voters, out of habit, reported to polling locations that were no longer theirs. Some were mistakenly assured by poll workers on the grounds that they were entitled to cast a provisional ballot at that precinct. Instead, thanks to Blackwell's ruling, at least 10,000 provisional votes were tossed out after Election Day simply because citizens wound up in the wrong line.(126)

In Toledo, Brandi and Brittany Stenson each got in a different line to vote in the gym at St. Elizabeth Seton School. Both of the sisters were registered to vote at the polling place on the city's north side, in the shadow of the giant DaimlerChrysler plant. Both cast ballots. But when the tallies were added up later, the family resemblance came to an abrupt end. Brittany's vote was counted -- but Brandi's wasn't. It wasn't enough that she had voted in the right *building*. If she wanted her vote to count, according to Blackwell's ruling, she had to choose the line that led to her assigned table. Her ballot -- along with those of her mother, her brother and thirty-seven other voters in the same precinct -- were thrown out(127) simply because they were, in the words of Rep. Stephanie Tubbs Jones (D-Ohio), "in the right church but the wrong pew."(128)

All told, the deliberate chaos that resulted from Blackwell's registration barriers did the trick. Black voters in the state -- who went overwhelmingly for Kerry -- were twenty percent more likely than whites to be forced to cast a provisional ballot.(129) In the end, nearly three percent of all voters in Ohio were forced to vote provisionally(130) -- and more than 35,000 of their ballots were ultimately rejected.(131)

VI. Long Lines

When Election Day dawned on November 2nd, tens of thousands of Ohio voters who had managed to overcome all the obstacles to registration erected by Blackwell discovered that it didn't matter whether they were properly listed on the voting rolls -- because long lines at their precincts prevented them from ever making it to the ballot box. Would-be voters in Dayton and Cincinnati routinely faced waits as long as three hours. Those in inner-city precincts in Columbus, Cleveland and Toledo -- which were voting for Kerry by margins of ninety percent or more -- often waited up to seven hours. At Kenyon College, students were forced to stand in line for eleven hours before being allowed to vote, with the last voters casting their ballots after three in the morning.(132)

A five-month analysis of the Ohio vote conducted by the Democratic National Committee concluded in June 2005 that *three percent* of all Ohio voters who showed up to vote on Election Day were forced to leave without casting a ballot.(133) That's more than 174,000 voters. "The vast majority of this lost vote," concluded the Conyers report, "was concentrated in urban, minority and Democratic-leaning areas."(134) Statewide, African-Americans waited an average of fifty-two minutes to vote, compared to only eighteen minutes for whites.(135)

Next page

--

75) LaRaye Brown, "Elections Board Plans Hearing For Challenges," *The News Messenger*, October 26, 2004.

76) Miller v. Blackwell, (S.D. Ohio), (6th Cir. 2004)

77) James Drew and Steve Eder, "Court Rejects GOP Voter Challenge; Some Counties Hold Hearings Anyhow; 200 Voters Turned Away," *Toledo Blade*, October 30, 2004.

78) United States Court of Appeals for the Third Circuit, Republican National Committee v. Democratic National Committee, No. 04-4186

79) United States Court of Appeals for the Third Circuit, Republican National Committee v. Democratic National Committee, No. 04-4186

80) Kate Zernike and William Yardley, "Charges of Dirty Tricks, Fraud and Voter Suppression Already Flying in Several States," *The New York Times*, November 1, 2004.

Greg Palast, "New Florida Vote Scandal Feared," BBC News, October 26, 2004.

81) Kate Zernike and William Yardley, "Charges of Dirty Tricks, Fraud and Voter Suppression Already Flying in Several States," *The New York Times*, November 1, 2004.

82) Greg J. Borowski, "GOP Demands IDs of 37,000 in City," *Milwaukee Journal Sentinel*, October 30, 2004.

83) "The Disenfranchisement of the Re-Enfranchised: How Confusion Over Felon Voter Eligibility in Ohio Keeps Qualified Ex-Offender Voters From the Polls," Prison Reform Advocacy Center, Cincinnati, Ohio, August 2004.

84) Preserving Democracy, 64.
Note: Additional reporting contributed to this paragraph.

85) Gardner Selby, "Hundreds of Texans Ride Bandwagons Around U.S.; Volunteers Say Election is Too Important Not to Hit the Campaign Trail," *San Antonio Express-News* (Texas), October 15, 2004.

86) "Down to the Wire," *Newsweek*, November 15, 2004.

87) Lynda Gorov and Anne E. Kornblut, "Gore to Challenge Results; No Plans to Concede; top Fla. Court refuses to order resumption of Miami-Dade County," *The Boston Globe*, November 24, 2000.

88) Al Kamen, "Miami 'Riot' Squad: Where are they Now?" *Washington Post*, January 24, 2005.

89) Al Kamen, "Walking the Talk," *Washington Post*, April 21, 2006.

90) Secretary of State Directive, No. 2004-31, Section II, September 7, 2004.

91) Tokaji, pg. 1227
and
Voting Rights Act, 42 U.S.C. 1971(a)(2)(B) (2000).

92) Jim Bebbington and Laura Bischoff, "Blackwell Rulings Rile Voting Advocates," *Dayton Daily News*.

93) Congress of the United States House of Representatives, Committee on the Judiciary, letter from Conyers to Blackwell

94) Catherine Candisky, "Secretary of State Lifts Order on Voting Forms; Lighter Paper Now Deemed Acceptable for Registration," *Columbus Dispatch*, September 30, 2004.

95) Analyses of Voter Disqualification, Cuyahoga County, Ohio, November 2004, Greater Cleveland Voter Registration Coalition, updated May 9, 2006, page 14.

96) Analyses of Voter Disqualification, page 5.

97) Analyses of Voter Disqualification, page. 1.

98) Lucas County Board of Elections -- Results of Investigation Following November 2004 General Election, April 5, 2005,

Richard Weghorst and Faith Lyon.

99) "Feds Confirm Investigation of GOP Campaign Contributor," The Associated Press State & Local Wire, April 28, 2005.

100) Mark Naymik, "Coin Dealer Raised Chunk of Change for Bush," *Plain Dealer*, August 7, 2005.

101) Christopher D. Kirkpatrick, "Noe Indicted for Laundering Money to Bush Campaign," *Toledo Blade*, October 27, 2005

Mike Wilkinson and James Drew, "Grand Jury Charges Noe with 53 Felony Counts," *Toledo Blade*, February 13, 2006

102) Lucas County Report, pg. 2.

103) Lucas County Report, pg. 9.

104) Lucas County Report, pg. 10.

105) Lucas County Report, pages 9-10.

106) Lucas County Report, pg. 9.

107) Lucas County Report, pg. 9.

108) Lucas County Report, pg. 18.

109) Lucas County Report, pages 18-19.

110) Lucas County Report, pg. 19.

111) Lucas County Report, pages 4, 6.

112) Lucas County Report, pg. 6.

113) "Remarks by the President at Victory 2004 Rally," Seagate Convention Centre, Toledo, Ohio, October 29, 2004, The White House.

note: Bernadette and Tom Noe's last name is incorrectly spelled "Noy" in the official White House transcript.

114) Help America Vote Act, Title III, Uniform and Nondiscriminatory Election Technology and Administration Requirements, Subtitle A Requirements, Section 302.

115) Directive No. 2004-33 from J. Kenneth Blackwell, Ohio Sec'y of State, to All County Boards of Elections 1 (Sept. 16, 2004.).

116) In the United States District Court for the Northern District of Ohio, Western Division, The Sandusky County Democratic Party v. J. Kenneth Blackwell, Case No. 3:04CV7582, Page 8.

117) Gregory Korte and Jim Siegel, "Defiant Blackwell Rips Judge; Secretary Says He'd go to Jail Before Rewriting Ballot Memo," *Cincinnati Enquirer*, October 22, 2004.

118) Sandusky County Democratic Party v. Blackwell, (N.D. Ohio), (6th Cir. 2004).
And
Tokaji, pg. 1229

119) Tokaji, pg. 1231

120) "Judge, Blackwell, Spar Over Provisional Ballots," The Associated Press, October 20, 2004.

121) In the United States District Court for the Northern District of Ohio Western Division, The League of Women Voters of Ohio, et al. v. J. Kenneth Blackwell, Case No. 3:04 CV 7622

122) David G. Savage, Richard B. Schmitt, "Bush Seeks Limit to Suits Over Voting Rights," *Los Angeles Times*, October

29, 2004.

123) Judge Julia Smith Gibbons August 2, 2002
Judge John M. Rogers November 27, 2002
Judge Jeffrey S. Sutton May 5, 2003
Judge Deborah L. Cook May 7, 2003

124) Darrell Rowland and Lee Leonard, "Federal Agency Distances Itself from Ohio Official; Blackwell Says Their Provisional-Balloting Positions are the Same," *Columbus Dispatch* (Ohio), October 20, 2004.

125) David S. Bernstein, "Questioning Ohio,"

Providence Phoenix, November 12-18, 2004.

126) Norma Robbins, "Facts to Ponder About the 2004 General Election," May 10, 2006.

127) Fritz Wenzel, "Purging of Rolls, Confusion Anger Voters; 41% of November 2nd Provisional Ballots Axed in Lucas County," *Toledo Blade*, January 9, 2005.

128) Interview with Stephanie Tubbs Jones

129) Democratic National Committee, Voting Rights Institute, "Democracy at Risk: The 2004 Election in Ohio," June 22, 2005. Page 6.

130) Democracy at Risk, pg. 5.

131) Ohio Secretary of State Web site, Provisional Ballots; Official Tabulation, November 2, 2004.

132) Michael Powell and Peter Slevin, "Several Factors Contributed to 'Lost' Voters in Ohio," *Washington Post*, December 15, 2004.

Christopher Hitchens, "Ohio's Odd Numbers," *Vanity Fair*.

Additional analysis by Bob Fitrakis, editor of the Columbus *Free Press*, and Richard Hayes Phillips.

133) Democracy at Risk, pg. 3.

134) Preserving Democracy, pg. 29.

135) Democracy at Risk, pg. 5.

ADVERTISEMENT

The long lines were not only foreseeable -- they were actually created by GOP efforts. Republicans in the state legislature, citing new electronic voting machines that were supposed to speed voting, authorized local election boards to reduce the number of precincts across Ohio. In most cases, the new machines never materialized -- but that didn't stop officials in twenty of the state's eighty-eight counties, all of them favorable to Democrats, from slashing the number of precincts by at least twenty percent.(136)

Republican officials also created long lines by failing to distribute enough voting machines to inner-city precincts. After the Florida disaster in 2000, such problems with machines were supposed to be a thing of the past. Under the Help America Vote Act, Ohio received more than $30 million in federal funds to replace its faulty punch-card machines with more reliable systems.(137) But on Election Day, that money was sitting in the bank. Why? Because Ken Blackwell had applied for an extension until 2006, insisting that there was no point in buying electronic machines that would later

have to be retrofitted under Ohio law to generate paper ballots.(138)

"No one has ever accused our secretary of state of lacking in ability," says Rep. Kucinich. "He's a rather bright fellow, and he's involved in the most minute details of his office. There's no doubt that he knew the effect of not having enough voting machines in some areas."

At liberal Kenyon College, where students had registered in record numbers, local election officials provided only two voting machines to handle the anticipated surge of up to 1,300 voters. Meanwhile, fundamentalist students at nearby Mount Vernon Nazarene University had one machine for 100 voters and faced no lines at all.(139) Citing the lines at Kenyon, the Conyers report concluded that the "misallocation of machines went beyond urban/suburban discrepancies to specifically target Democratic areas."(140)

In Columbus, which had registered 125,000 new voters(141) -- more than half of them black(142) -- the board of elections estimated that it would need 5,000 machines to handle the huge surge.(143) "On Election Day, the county experienced an unprecedented turnout that could only be compared to a 500-year flood," says Matt Damschroder,(144) chairman of the Franklin County Board of Elections and the former head of the Republican Party in Columbus.(145) But instead of buying more equipment, the Conyers investigation found, Damschroder decided to "make do" with 2,741 machines.(146) And to make matters worse, he favored his own party in distributing the equipment. According to *The Columbus Dispatch*, precincts that had gone seventy percent or more for Al Gore in 2000 were allocated seventeen fewer machines in 2004, while strong GOP precincts received eight additional machines.(147) An analysis by voter advocates found that all but three of the thirty wards with the best voter-to-machine ratios were in Bush strongholds; all but one of the seven with the worst ratios were in Kerry country.(148)

The result was utterly predictable. According to an investigation by the Columbus *Free Press*, white Republican suburbanites, blessed with a surplus of machines, averaged waits of only twenty-two minutes; black urban Democrats averaged three hours and fifteen minutes.(149) "The allocation of voting machines in Franklin County was clearly biased against voters in precincts with high proportions of African-Americans," concluded Walter Mebane Jr., a government professor at Cornell University who conducted a statistical analysis of the vote in and around Columbus.(150)

By midmorning, when it became clear that voters were dropping out of line rather than braving the wait, precincts appealed for the right to distribute paper ballots to speed the process. Blackwell denied the request, saying it was an invitation to fraud.(151) A lawsuit ensued, and the handwritten affidavits submitted by voters and election officials offer a heart-rending snapshot of an electoral catastrophe in the offing:(152)

From Columbus Precinct 44D:
"There are three voting machines at this precinct. I have been informed that in prior elections there were normally four voting machines. At 1:45 p.m. there are approximately eighty-five voters in line. At this time, the line to vote is approximately three hours long. This precinct is largely African-American. I have personally witnessed voters leaving the polling place without voting due to the length of the line."

From Precinct 40:
"I am serving as a presiding judge, a position I have held for some 15+ years in precinct 40. In all my years of service, the lines are by far the longest I have seen, with some waiting as long as four to five hours. I expect the situation to only worsen as the early evening heavy turnout approaches. I have requested additional machines since 6:40 a.m. and no assistance has been offered."

Precinct 65H:
"I observed a broken voting machine that was not in use for approximately two hours. The precinct judge was very diligent but could not get through to the BOE."

Precinct 18A:
"At 4 p.m. the average wait time is about 4.5 hours and continuing to increase?. Voters are continuing to leave without voting."

As day stretched into evening, U.S. District Judge Algernon Marbley issued a temporary restraining order requiring that voters be offered paper ballots.(153) But it was too late: According to bipartisan estimates published in *The Washington Post*, as many as 15,000 voters in Columbus had already given up and gone home.(154) When closing time came at the polls, according to the Conyers report, some precinct workers illegally dismissed citizens who had waited for hours in the rain -- in direct violation of Ohio law, which stipulates that those in line at closing time are allowed to remain and

vote.(155)

The voters disenfranchised by long lines were overwhelmingly Democrats. Because of the unequal distribution of voting equipment, the median turnout in Franklin County precincts won by Kerry was fifty-one percent, compared to sixty-one percent in those won by Bush. Assuming sixty percent turnout under more equitable conditions, Kerry would have gained an additional 17,000 votes in the county.(156)

In another move certain to add to the traffic jam at the polls, the GOP deployed 3,600 operatives on Election Day to challenge voters in thirty-one counties -- most of them in predominantly black and urban areas.(157) Although it was billed as a means to "ensure that voters are not disenfranchised by fraud,"(158) Republicans knew that the challengers would inevitably create delays for eligible voters. Even Mark Weaver, the GOP's attorney in Ohio, predicted in late October that the move would "create chaos, longer lines and frustration."(159)

The day before the election, Judge Dlott attempted to halt the challengers, ruling that "there exists an enormous risk of chaos, delay, intimidation and pandemonium inside the polls and in the lines out the doors." Dlott was also troubled by the placement of Republican challengers: In Hamilton County, fourteen percent of new voters in white areas would be confronted at the polls, compared to ninety-seven percent of new voters in black areas.(160) But when the case was appealed to the Supreme Court on Election Day, Justice John Paul Stevens allowed the challenges to go forward. "I have faith," he ruled, "that the elected officials and numerous election volunteers on the ground will carry out their responsibilities in a way that will enable qualified voters to cast their ballots."(161)

In fact, Blackwell gave Republican challengers unprecedented access to polling stations, where they intimidated voters, worsening delays in Democratic precincts. By the end of the day, thanks to a whirlwind of legal wrangling, the GOP had even gotten permission to use the discredited list of 35,000 names from its illegal caging effort to challenge would-be voters.(162) According to the survey by the DNC, nearly 5,000 voters across the state were turned away at the polls because of registration challenges -- even though federal law required that they be provided with provisional ballots.(163)

VII. Faulty Machines

Voters who managed to make it past the array of hurdles erected by Republican officials found themselves confronted by voting machines that didn't work. Only 800,000 out of the 5.6 million votes in Ohio were cast on electronic voting machines, but they were plagued with errors.(164) In heavily Democratic areas around Youngstown, where nearly 100 voters reported entering "Kerry" on the touch screen and watching "Bush" light up, at least twenty machines had to be recalibrated in the middle of the voting process for chronically flipping Kerry votes to Bush.(165) (Similar "vote hopping" from Kerry to Bush was reported by voters and election officials in other states.)(166) Elsewhere, voters complained in sworn affidavits that they touched Kerry's name on the screen and it lit up, but that the light had gone out by the time they finished their ballot; the Kerry vote faded away.(167) In the state's most notorious incident, an electronic machine at a fundamentalist church in the town of Gahanna recorded a total of 4,258 votes for Bush and 260 votes for Kerry.(168) In that precinct, however, there were only 800 registered voters, of whom 638 showed up.(169) (The error, which was later blamed on a glitchy memory card, was corrected before the certified vote count.)

In addition to problems with electronic machines, Ohio's vote was skewed by old-fashioned punch-card equipment that posed what even Blackwell acknowledged was the risk of a "Florida-like calamity."(170) All but twenty of the state's counties relied on antiquated machines that were virtually guaranteed to destroy votes(171) -- many of which were counted by automatic tabulators manufactured by Triad Governmental Systems,(172) the same company that supplied Florida's notorious butterfly ballot in 2000. In fact, some 95,000 ballots in Ohio recorded no vote for president at all -- most of them on punch-card machines. Even accounting for the tiny fraction of voters in each election who decide not to cast votes for president -- generally in the range of half a percent, according to Ohio State law professor and respected elections scholar Dan Tokaji -- that would mean that at least 66,000 votes were invalidated by faulty voting equipment.(173) If counted by hand instead of by automated tabulator, the vast majority of these votes would have been discernable. But thanks to a corrupt recount process, only one county hand-counted its ballots.(174)

Most of the uncounted ballots occurred in Ohio's big cities. In Cleveland, where nearly 13,000 votes were ruined, a *New York Times* analysis found that black precincts suffered more than twice the rate of spoiled ballots than white districts.(175) In Dayton, Kerry-leaning precincts had nearly twice the number of spoiled ballots as Bush-leaning precincts.(176) Last April, a federal court ruled that Ohio's use of punch-card balloting violated the equal-protection rights of the citizens who voted on them.(177)

In addition to spoiling ballots, the punch-card machines also created bizarre miscounts known as "ballot crawl." In Cleveland Precinct 4F, a heavily African-American precinct, Constitution Party candidate Michael Peroutka was credited with an impressive forty-one percent of the vote. In Precinct 4N, where Al Gore won ninety-eight percent of the vote in 2000, Libertarian Party candidate Michael Badnarik was credited with thirty-three percent of the vote. Badnarik and Peroutka also picked up a sizable portion of the vote in precincts across Cleveland -- 11M, 3B, 8G, 8I, 3I.(178) "It appears that hundreds, if not thousands, of votes intended to be cast for Senator Kerry were recorded as being for a third-party candidate," the Conyers report concludes.(179)

But it's not just third-party candidates: Ballot crawl in Cleveland also shifted votes from Kerry to Bush. In Precinct 13B, where Bush received only six votes in 2000, he was credited with twenty percent of the total in 2004. Same story in 9P, where Bush recorded eighty-seven votes in 2004, compared to his grand total of one in 2000.(180)

VIII. Rural Counties

Despite the well-documented effort that prevented hundreds of thousands of voters in urban and minority precincts from casting ballots, the worst theft in Ohio may have quietly taken place in rural counties. An examination of election data suggests widespread fraud -- and even good old-fashioned stuffing of ballot boxes -- in twelve sparsely populated counties scattered across southern and western Ohio: Auglaize, Brown, Butler, Clermont, Darke, Highland, Mercer, Miami, Putnam, Shelby, Van Wert and Warren. (See The Twelve Suspect Counties) One key indicator of fraud is to look at counties where the presidential vote departs radically from other races on the ballot. By this measure, John Kerry's numbers were suspiciously low in each of the twelve counties -- and George Bush's were unusually high.

Take the case of Ellen Connally, a Democrat who lost her race for chief justice of the state Supreme Court. When the ballots were counted, Kerry should have drawn far more votes than Connally -- a liberal black judge who supports gay rights and campaigned on a shoestring budget. And that's exactly what happened statewide: Kerry tallied 667,000 more votes for president than Connally did for chief justice, outpolling her by a margin of thirty-two percent. Yet in these twelve off-the-radar counties, Connally somehow managed to outperform the best-funded Democrat in history, thumping Kerry by a grand total of 19,621 votes -- a margin of ten percent.(181) The Conyers report -- recognizing that thousands of rural Bush voters were unlikely to have backed a gay-friendly black judge roundly rejected in Democratic precincts -- suggests that "thousands of votes for Senator Kerry were lost."(182)

Kucinich, a veteran of elections in the state, puts it even more bluntly. "Down-ticket candidates shouldn't outperform presidential candidates like that," he says. "That just doesn't happen. The question is: Where did the votes for Kerry go?"

Next page

--

136) Bernstein, *Providence Phoenix*

137) U.S. Election Assistance Comm'n, Funding for States,
and Tokaji, pg. 1222.

138) "The Battle Over Voting Technology," PBS, Online NewsHour, December 16, 2003.
Paul Festa, "States Scrutinize e-Voting as Primaries Near," CNET News.com, December 8, 2003.

139) Preserving Democracy, pg. 27.

140) Preserving Democracy, pg. 30.

141) Matt Damschroder, chairman of Franklin County Board of Elections. 142) Preserving Democracy, pg. 26. 143) Michael Powell and Peter Slevin, "Several Factors Contributed to 'Lost' Voters in Ohio," *Washington Post*, December 15, 2004.

144) Correspondence with Matt Damschroder.

145) Suzanne Hoholik and Mark Ferenchik, "GOP Council Hopes Rising; Party expects ruling on petitions will put its candidate on ballot," *Columbus Dispatch*, March 26, 2003.

146) Preserving Democracy, pg. 25.

147) Mark Niquette, "GOP Strongholds Saw Increase in Voting Machines," *Columbus Dispatch*, December 12, 2004.

148) Michael Powell and Peter Slevin, "Several Factors Contributed to 'Lost' Voters in Ohio," *Washington Post*, December 15, 2004.

149) Columbus *Free Press* editor, Bob Fitrakis.

150) "Voting Machine Allocation in Franklin County, Ohio, 2004: Response to the U.S. Department of Justice Letter of June 29, 2005," Walter R. Mebane, Jr., February 11, 2006, Page 13.

151) Tokaji, pg. 1238.

Ohio Democratic Party v. Blackwell, No. C2 04 1055, (S.D. Ohio Nov. 2, 2004).

152) Ohio Democratic Party v. Blackwell, No. C2 04 1055, (S.D. Ohio Nov. 2, 2004).

153) Ohio Democratic Party v. Blackwell, No. C2 04 1055, slip op. At 1 (S.D. Ohio Nov. 2, 2004).

154) *Washington Post*, "Several Factors Contributed to 'Lost' Voters in Ohio," Michael Powell and Peter Slevin, December 15, 2004.

155) Preserving Democracy, pg. 25.

156) Affidavit of Richard Hayes Phillips, December 10, 2004.

157) Mark Niquette, "Finally, It's Time to Vote; U.S. Appeals Court Overturns Ban, Allows Challengers Back in Polling Sites," *Columbus Dispatch* (Ohio), November 2, 2004.

158) In the United States District Court for the Southern District of Ohio, Western Division, Marian A. Spencer, et. al., v. J. Kenneth Blackwell, Case no. C-1-04-738, page 3.

159) James Dao, "The 2004 Campaign: Ohio, G.O.P. Bid to Contest Registrations is Blocked," *The New York Times*, October 28, 2004.

160) Marian A. Spencer, et. al., v. J. Kenneth Blackwell; In the United States District Court for the Southern District of Ohio, Western Division; Case no. C-1-04-738.

161) Dan Horn, Howard Wilkinson, and Cindi Andrews, "Supreme Court Justice Allows Challengers," *Cincinnati Enquirer*.

162) Tokaji, pages 1237-1238.

163) Democracy at Risk, pg. 20.

164) The Columbus *Free Press*.

165) "Errors Plague Voting Process in Ohio, Pa." *The Vindicator*, November 3, 2004, Vindicator Staff Report

166) Voters Unite catalogues news reports from around the country that give examples of dysfunctional voting machines, among other election stories.

167) The Columbus *Free Press*.

168) Jim Woods, "In One Precinct, Bush's Tally was Supersized by a Computer Glitch," *Columbus Dispatch* (Ohio), November 5, 2004.

169) Hitchens, *Vanity Fair*.

170) Letter from J. Kenneth Blackwell, Ohio Secretary of State, to Doug White, President, Ohio Senate 3 (Feb. 26, 2004).

171) Sixty-eight counties used punch card ballots. Thirteen used optical scan machines. Seven used touch-screen technology.

172) Malia Rulon, "Congressman Calls For FBI Investigation Into Ohio Election," The Associated Press State & Local Wire, December 15, 2004.

173) Tokaji, Page 1221.

174) Jim Konkoly, "Volunteers Complete Local Recount," *Coshocton Tribune*, December 18, 2004.

175) *New York Times*, "Voting Problems in Ohio Spur Call for Overhaul," James Dao, Ford Fessenden, December 24, 2004.

176) Ken McCall and Jim Bebbington, "Two Precincts had High Undercounts, Analysis Shows,"*Dayton Daily News*, November 18, 2004.

177) Lisa A. Abraham, "Punch-Card Voting is Illegal," *Akron Beacon Journal*, April 22, 2006.

178) Analysis by Hayes Phillips.

179) Preserving Democracy, pg. 57.

180) Analysis by Hayes Phillips.

181) Analysis completed by using official tallies on the Ohio Secretary of State Web site.
Official tallies for Kerry

Official tallies for Connally

182) Preserving Democracy, pg. 55.

ADVERTISEMENT

They certainly weren't invalidated by faulty voting equipment: a trifling one percent of presidential ballots in the twelve suspect counties were spoiled. The more likely explanation is that they were fraudulently shifted to Bush. Statewide, the president outpolled Thomas Moyer, the Republican judge who defeated Connally, by twenty-one percent. Yet in the twelve questionable counties, Bush's margin over Moyer was *fifty* percent -- a strong indication that the president's certified vote total was inflated. If Kerry had maintained his statewide margin over Connally in the twelve suspect counties, as he almost assuredly would have done in a clean election, he would have bested her by 81,260 ballots. That's a swing of 162,520 votes from Kerry to Bush -- more than enough to alter the outcome. (183)

"This is very strong evidence that the count is off in those counties," says Freeman, the poll analyst. "By itself, without anything else, what happened in these twelve counties turns Ohio into a Kerry state. To me, this provides every indication of fraud."

How might this fraud have been carried out? One way to steal votes is to tamper with individual ballots -- and there is evidence that Republicans did just that. In Clermont County, where optical scanners were used to tabulate votes, sworn affidavits by election observers given to the House Judiciary Committee describe ballots on which marks for Kerry were covered up with white stickers, while marks for Bush were filled in to replace them. Rep. Conyers, in a letter to the FBI, described the testimony as "strong evidence of vote tampering if not outright fraud." (184) In Miami County, where Connally outpaced Kerry, one precinct registered a turnout of 98.55 percent (185) -- meaning that all but ten eligible voters went to the polls on Election Day. An investigation by the Columbus *Free Press*, however, collected affidavits from twenty-five people who swear they didn't vote. (186)

In addition to altering individual ballots, evidence suggests that Republicans tampered with the software used to tabulate votes. In Auglaize County, where Kerry lost not only to Connally but to two other defeated Democratic judicial

candidates, voters cast their ballots on touch-screen machines. (187) Two weeks before the election, an employee of ES&S, the company that manufactures the machines, was observed by a local election official making an unauthorized log-in to the central computer used to compile election results. (188) In Miami County, after 100 percent of precincts had already reported their official results, an additional 18,615 votes were inexplicably added to the final tally. The last-minute alteration awarded 12,000 of the votes to Bush, boosting his margin of victory in the county by nearly 6,000. (189)

The most transparently crooked incident took place in Warren County. In the leadup to the election, Blackwell had illegally sought to keep reporters and election observers at least 100 feet away from the polls. (190) The Sixth Circuit, ruling that the decree represented an unconstitutional violation of the First Amendment, noted ominously that "democracies die behind closed doors." But the decision didn't stop officials in Warren County from devising a way to count the vote in secret. Immediately after the polls closed on Election Day, GOP officials -- citing the FBI -- declared that the county was facing a terrorist threat that ranked ten on a scale of one to ten. The county administration building was hastily locked down, allowing election officials to tabulate the results without any reporters present.

In fact, there was no terrorist threat. The FBI declared that it had issued no such warning, and an investigation by *The Cincinnati Enquirer* unearthed e-mails showing that the Republican plan to declare a terrorist alert had been in the works for eight days prior to the election. Officials had even refined the plot down to the language they used on signs notifying the public of a lockdown. (When ROLLING STONE requested copies of the same e-mails from the county, officials responded that the documents have been destroyed.) (191)

The late-night secrecy in Warren County recalls a classic trick: Results are held back until it's determined how many votes the favored candidate needs to win, and the totals are then adjusted accordingly. When Warren County finally announced its official results -- one of the last counties in the state to do so (192) -- the results departed wildly from statewide patterns. John Kerry received 2,426 fewer votes for president than Ellen Connally, the poorly funded black judge, did for chief justice. (193) As the Conyers report concluded, "It is impossible to rule out the possibility that some sort of manipulation of the tallies occurred on election night in the locked-down facility." (194)

Nor does the electoral tampering appear to have been isolated to these dozen counties. Ohio, like several other states, had an initiative on the ballot in 2004 to outlaw gay marriage. Statewide, the measure proved far more popular than Bush, besting the president by 470,000 votes. But in six of the twelve suspect counties -- as well as in six other small counties in central Ohio -- Bush outpolled the ban on same-sex unions by 16,132 votes. To trust the official tally, in other words, you must believe that thousands of rural Ohioans voted for both President Bush *and* gay marriage. (195)

IX. Rigging the Recount

After Kerry conceded the election, the Green and Libertarian parties launched a recount of all eighty-eight counties in Ohio. Under state law, county boards of election were required to randomly select three percent of their precincts and recount the ballots both by hand and by machine. If the two totals reconciled exactly, a costly hand recount of the remaining votes could be avoided; machines could be used to tally the rest.

But election officials in Ohio worked outside the law to avoid hand recounts. According to charges brought by a special prosecutor in April, election officials in Cleveland fraudulently and secretly *pre-counted* precincts by hand to identify ones that would match the machine count. They then used these pre-screened precincts to select the "random" sample of three percent used for the recount.

"If it didn't balance, they excluded those precincts," said the prosecutor, Kevin Baxter, who has filed felony indictments against three election workers in Cleveland. "They screwed with the process and increased the probability, if not the certainty, that there would not be a full, countywide hand count." (196)

Voting machines were also tinkered with prior to the recount. In Hocking County, deputy elections director Sherole Eaton caught an employee of Triad -- which provided the software used to count punch-card ballots in nearly half of Ohio's counties (197) -- making unauthorized modifications to the tabulating computer before the recount. Eaton told the Conyers committee that the same employee also provided county officials with a "cheat sheet" so that "the count would come out perfect and we wouldn't have to do a full hand-recount of the county." (198) After Eaton blew the whistle on the illegal tampering, she was fired.

(199) The same Triad employee was dispatched to do the same work in at least five other counties. (200) Company president Tod Rapp -- who contributed to Bush's campaign (201) -- has confirmed that Triad routinely makes such tabulator adjustments to help election officials avoid hand recounts. In the end, every county serviced by Triad failed to

conduct full recounts by hand. (202)

Even more troubling, in at least two counties, Fulton and Henry, Triad was able to connect to tabulating computers remotely via a dial-up connection, and reprogram them to recount only the presidential ballots. (203) If that kind of remote tabulator modification is possible for the purposes of the recount, it's no great leap to wonder if such modifications might have helped skew the original vote count. But the window for settling such questions is closing rapidly: On November 2nd of this year, on the second anniversary of the election, state officials will be permitted under Ohio law to shred all ballots from the 2004 election. (204)

X. What's At Stake

The mounting evidence that Republicans employed broad, methodical and illegal tactics in the 2004 election should raise serious alarms among news organizations. But instead of investigating allegations of wrongdoing, the press has simply accepted the result as valid. "We're in a terrible fix," Rep. Conyers told me. "We've got a media that uses its bullhorn in reverse -- to turn down the volume on this outrage rather than turning it up. That's why our citizens are not up in arms."

The lone news anchor who seriously questioned the integrity of the 2004 election was Keith Olbermann of MSNBC. I asked him why he stood against the tide. "I was a sports reporter, so I was used to dealing with numbers," he said. "And the numbers made no sense. Kerry had an insurmountable lead in the exit polls on Election Night -- and then everything flipped." Olbermann believes that his journalistic colleagues fell down on the job. "I was stunned by the lack of interest by investigative reporters," he said. "The Republicans shut down Warren County, allegedly for national security purposes -- and no one covered it. Shouldn't someone have sent a camera and a few reporters out there?"

Olbermann attributes the lack of coverage to self-censorship by journalists. "You can rock the boat, but you can never say that the entire ocean is in trouble," he said. "You cannot say: By the way, there's something wrong with our electoral system."

Federal officials charged with safeguarding the vote have also failed to contest the election. "Congress hasn't investigated this at all," says Kucinich. "There has been no oversight over our nation's most basic right: the right to vote. How can we call ourselves a beacon of democracy abroad when the right to vote hasn't been secured in free and fair elections at home?"

Sen. John Kerry -- in a wide-ranging discussion of ROLLING STONE's investigation -- expressed concern about Republican tactics in 2004, but stopped short of saying the election was stolen. "Can I draw a conclusion that they played tough games and clearly had an intent to reduce the level of our vote? Yes, absolutely. Can I tell you to a certainty that it made the difference in the election? I can't. There's no way for me to do that. If I could have done that, then obviously I would have found some legal recourse."

Kerry conceded, however, that the widespread irregularities make it impossible to know for certain that the outcome reflected the will of the voters. "I think there are clearly states where it is questionable whether everybody's vote is being counted, whether everybody is being given the opportunity to register and to vote," he said. "There are clearly barriers in too many places to the ability of people to exercise their full franchise. For that to be happening in the United States of America today is disgraceful."

Kerry's comments were echoed by Howard Dean, the chairman of the Democratic National Committee. "I'm not confident that the election in Ohio was fairly decided," Dean says. "We know that there was substantial voter suppression, and the machines were not reliable. It should not be a surprise that the Republicans are willing to do things that are unethical to manipulate elections. That's what we suspect has happened, and we'd like to safeguard our elections so that democracy can still be counted on to work."

To help prevent a repeat of 2004, Kerry has co-sponsored a package of election reforms called the Count Every Vote Act. The measure would increase turnout by allowing voters to register at the polls on Election Day, provide provisional ballots to voters who inadvertently show up at the wrong precinct, require electronic voting machines to produce paper receipts verified by voters, and force election officials like Blackwell to step down if they want to join a campaign. (205) But Kerry says his fellow Democrats have been reluctant to push the reforms, fearing that Republicans would use their majority in Congress to create even more obstacles to voting. "The real reason there is no appetite up here is that people are afraid the Republicans will amend HAVA and shove something far worse down our throats," he told me.

On May 24th, Sen. Mitch McConnell (R-Ky.) tried unsuccessfully to amend the immigration bill to bar anyone who lacks a

government-issued photo ID from voting (206) -- a rule that would disenfranchise at least six percent of Americans, the majority of them urban and poor, who lack such identification. (207) The GOP-controlled state legislature in Indiana passed a similar measure, and an ID rule in Georgia was recently struck down as unconstitutional. (208)

"Why erect those kinds of hurdles unless you're afraid of voters?" asks Ralph Neas, director of People for the American Way. "The country will be better off if everyone votes -- Democrats and Republicans. But that is not the Blackwell philosophy, that is not the George W. Bush or Jeb Bush philosophy. They want to limit the franchise and go to extraordinary lengths to make it more difficult to vote."

The issue of what happened in 2004 is not an academic one. For the second election in a row, the president of the United States was selected not by the uncontested will of the people but under a cloud of dirty tricks. Given the scope of the GOP machinations, we simply cannot be certain that the right man now occupies the Oval Office -- which means, in effect, that we have been deprived of our faith in democracy itself.

American history is littered with vote fraud -- but rather than learning from our shameful past and cleaning up the system, we have allowed the problem to grow even worse. If the last two elections have taught us anything, it is this: The single greatest threat to our democracy is the insecurity of our voting system. If people lose faith that their votes are accurately and faithfully recorded, they will abandon the ballot box. Nothing less is at stake here than the entire idea of a government by the people.

Voting, as Thomas Paine said, "is the right upon which all other rights depend." Unless we ensure that right, everything else we hold dear is in jeopardy.

EDITOR'S NOTE: This story has been updated to clarify a statement in the published version. The article originally stated that John Kerry's campaign "helped the Libertarian and Green parties pay for a recount of all eighty-eight counties in Ohio." In fact, the Green Party paid the state recount fee, and the Kerry campaign paid for its own attorney as a party to the litigation surrounding the recount.

Talk about it in our National Affairs blog, or see exclusive documents, sources, charts and commentary.

--

183) Analysis conducted through official vote tallies posted on Ohio Secretary of State Web site:
Tally 1
Tally 2

184) Letter from Rep. John Conyers to Chris Swecker, assistant director of the Criminal Investigative Division at the Federal Bureau of Investigation. See attached affidavits.

185) Miami County Board of Elections.

186) Confirmed by Bob Fitrakis of the Free Press

187) Analysis conducted through official vote tallies posted on Ohio Secretary of State Web site.

188) Erin Miller, "Board Awaits State Follow Up," *The Evening Leader*.

189) "Preserving Democracy," pages 58-59.

190) The Associated Press, "News Groups Sue Ohio Elections Chief Over Poll Access," Associated Press, November 2, 2004.
and
Mark Crispin Miller, "None Dare Call It Stolen," *Harper's*, August 2005.

191) Incidents in Warren County were catalogued in a series of articles by the *Cincinnati Enquirer*:
Erica Solvig, "No Changes in Final Warren Co. Vote Count; E-mails Released Monday Show Lockdown Pre-planned," *Cincinnati Enquirer*, November 16, 2004.

Erica Solvig, "Warren's Vote Tally Walled Off; Alone in Ohio, Officials Cited Homeland Security," *Cincinnati Enquirer*, November 5, 2004

Erica Solvig and Dan Horn, "Warren Co. Defends Lockdown Decision; FBI denies warning officials of any special threat," *Cincinnati Enquirer*, November 10, 2004.

Erica Solvig, "Warren Co. Recount Goes Public; After Election Night lockdown, security eases up," *Cincinnati Enquirer*, December 15, 2004.

192) Erica Solvig, "Warren's Vote Tally Walled Off; Alone in Ohio, Officials Cited Homeland Security," *Cincinnati Enquirer*, November 5, 2004.

193) Analysis conducted through official vote tallies posted on the Ohio Secretary of State Web site.

194) "Preserving Democracy," pg. 52.

195) Analysis conducted through official vote tallies posted on the Ohio Secretary of State Web site.

196) Joan Mazzolini, "Workers Accused of Fudging '04 Recount; Prosecutor Says Cuyahoga Skirted Rules," *The Plain Dealer*, April 6, 2006.

197) Malia Rulon, "Congressman Calls for FBI Investigation Into Ohio Election," The Associated Press, December 15, 2004.

198) Affidavit, December 13, 2004, Sherole Eaton, Re: General Election 2004, Hocking County.

199) Jon Craig, "'04 Election in Hocking County; Worker Who Questioned Recount is Asked to Quit," *Columbus Dispatch* (Ohio), June 1st, 2005.

200) "Preserving Democracy," pg. 81.

201) www.opensecrets.org

202) "Preserving Democracy," pg. 82.

203) "Preserving Democracy," pg. 83.

204) Ohio Secretary of State's press office.

205) Count Every Vote Act of 2005

206) Dena Bunis, "Senate Limits Immigration Debate," The *Orange County Register*, May 24, 2006.

207) Tokaji's blog, Election Law at Moritz, "McConnell's Voter ID Amendment," May 22, 2006.

208) United States District Court Northern District of Georgia, Rome Division

THE CAMPAIGN LEGAL CENTER

"...the public interest in ...of campaign and media law"

Blog home page

CLC home page

Campaign Finance Litigation

Campaign Finance Policy

Ethics and Lobbying Reform

FEC Activity

Media Policy

Redistricting

Voting Rights Act

Voting Rights Enforcement Project

CAMPAIGN LEGAL CENTER BLOG

Posted June 12, 2007 by J. Gerald Hebert

FEC Nominee Hans von Spakovsky: A Repeat Offender

In recent weeks, the politicization of the Department of Justice (DOJ) has been in the spotlight. One of the people implicated in that emerging scandal is Hans von Spakovsky, who has been nominated to the Federal Election Commission (FEC) and whose confirmation hearing is set for tomorrow before the Senate Rules Committee. Previous blog posts have highlighted Mr. von Spakovsky's misdeeds at the Department of Justice and his poor record over the last year as an FEC Commissioner. But little has been written about von Spakovsky's pre-DOJ involvement with a group called the Voting Integrity Project (VIP). Who are they ? What did they do ?

Both the *New Yorker* magazine and the online magazine *Slate* have reported previously on the VIP. Here's what has been published thus far:

"The Front" written by Jeremy Derfner for *Slate*, details the activities of the Voter Integrity Project (VIP), a partisan group to which Mr. von Spakovsky was an advisory board member.

The article essentially described the group's activities as trying to limit voter access, but supposedly increase voter "integrity." From watching over people's shoulders at polling locations, to demanding photo identification laws, the group has tried to push laws that would make it more difficult to vote while coincidently disenfranchising traditionally Democratic voters.

Prior to delving into election policy issues, the VIP group, which appears to be defunct, started out its activities by "answering the call from election losers who accused their opponents of fraud." For example, the *Slate* article notes that in 1996, the group hired a private investigator to support its claim that Louisiana Senator Mary Landrieu (D-LA) had won her seat as a result of votes stolen from her opponent. VIP filed a report with the Senate Rules and Administration Committee but after a year of investigation by the Committee, the investigation was dropped by a unanimous vote.

Although the VIP claimed to be independent and non-partisan, it was anything but. As the *Slate* article notes, "though VIPs members assert that they are both independent and nonpartisan, the organization is essentially a conservative front. Five of seven members of the governing board are Republicans. The lone Democrat is a college student who designed the VIP website." Helen Blackwell, Virginia Chairwoman of the Phyllis Schlafly's group Eagle Forum, served as VIP's chairwoman of the board.

Perhaps the most disturbing aspect of the VIP's activities was its poll watching program. In the *Slate* article, the President of the Voter Integrity

SIGN UP

Sign up for the Center's Weekly Reports, News Alerts, and Blog

1640 Rhode Island Ave., NW
Suite 650
Washington, DC 20036

Phone: (202) 736 - 2200

Fax: (202) 736 - 2222

Send an Email

Project (Deborah Phillips) noted that her organization sent in poll watchers to look over the shoulders of poll workers. According to Phillips, the group wanted to have a chilling effect on voters whose registrations were either invalid or questionable. In Phillips' words: "when [illegitimate voters] see VIP poll watchers in there checking lists, it has a chilling effect." But as the *Slate* article correctly notes, such poll watching and voter challenging activities can have "a chilling effect on legitimate voters as well." This is especially true because the VIP poll-watching program was often targeted to "heavily minority neighborhoods...on the theory that they generate suspiciously 'lopsided' results." Essentially, VIP's theory of poll watching seemed to be: if people are voting overwhelmingly Democratic, there must be cheating involved.

In the *New Yorker* article, titled "Poll Position" by Jeffrey Toobin, we learn of von Spakovsky's role in the 2000 Florida *Bush v. Gore* contest. At that time, von Spakovsky was still associated with the Voting Integrity Project and the group was commissioned by the State of Florida to clean up Florida's voter registration rolls by purging ex-felons from the rolls. But von Spakovsky's group ended up purging many people who were not ex-felons in error. As *the New Yorker* reported: "the process for the removal of alleged felons...led, notoriously, to the mistaken disenfranchisement of thousands of voters, most of them Democratic, before the 2000 election." During the weeks after the famously contested election and recount in Florida, von Spakovsky served as a volunteer to the Bush campaign. Soon thereafter, he was awarded a career attorney slot in the Civil Rights Division, a slot normally reserved for those hired on merit and without regard to their past partisan activities.

Once he arrived at DOJ, von Spakovsky continued to offer legal advice that was flawed and usually aimed at limiting voters' rights, rather than seeking an expansive view of the right to vote. For example, the *New Yorker* piece notes that von Spakovsky advised Maryland officials that the state was required to verify Social Security numbers for those registering under the Help America Vote Act (HAVA)—an interpretation that the Maryland Attorney General's office found "clearly contrary to the statute[.]"

Congress enacted the National Voter Registration Act of 1993 (also known as the "NVRA" and the "Motor Voter Act"), to enhance voting opportunities for every American, and making it easier for all Americans to register to vote and to maintain their registration. The NVRA grants the Department of Justice authority to bring civil actions in federal court to enforce its requirements. In January 2005, while at DOJ, von Spakovsky used the NVRA to launch an anti-voter initiative. As reported by Greg Gordon in the June 5 *Sacramento Bee*, the Department of Justice sued officials in seven states— Alabama, Georgia, Indiana, Maine, Missouri, New Jersey and New York—demanding that they comply with NVRA by purging their voter rolls. According to former Justice Department Voting Chief Joseph Rich, von Spakovsky's directive changed Justice Department priorities under the motor voter law "from expanding registration opportunities—the primary purpose of the statute —to unnecessarily forcing jurisdictions to remove voters from their voter rolls." Rich added: "Aggressive purging of the voter rolls tends to have a disproportionate impact on voters who move frequently, live in cities and have names that are more likely to be incorrectly entered into databases." Primarily, Rich said in the article, this means poor, minority voters. The Senate Judiciary Committee has been looking into the allegations that Justice Department officials, like Hans von Spakovsky and Brad Schlozman, used the law enforcement machinery of the Department to achieve partisan gains.

Von Spakovsky also misconstrued the requirements of HAVA in a DOJ letter to Arizona election officials stating that those persons casting a provisional ballot had to produce identification, later withdrawing the letter

as containing an inaccurate interpretation of the law. Before the letter was withdrawn, however, von Spakovsky attempted to pressure officials at the federal Election Administration Commission (EAC) into agreeing with his incorrect interpretation, even getting a staff member from U.S. Senator Kit Bond's (R-MO) office to e-mail the EAC chair about the matter. When the EAC chair got wind of this, he wrote von Spakovsky a sharply worded email saying, "Is the email below from Jack Bartling [of Senator Bond's staff] a product of some phone calls you have made regarding the AZ case ? Is it an attempt by you to put pressure on me—and the EAC ? If so, I do not appreciate it." As if this wasn't bad enough, von Spakovsky tried to get the EAC chair to withdraw a letter the EAC had sent to Arizona officials informing them that they had to accept federal voter registration forms without documented proof of citizenship. He proposed to the EAC chair a trade: DOJ would rescind its legally incorrect HAVA letter in exchange for the EAC withdrawing its legally correct HAVA letter. Such bargaining over federal law enforcement was unprecedented and criticized by the EAC chair.

What seems clear is that von Spakovsky is more obsessed with the issue of pursuing voter fraud for partisan gain than he is with protecting voting rights. In a speech at Georgetown University in 2004, von Spakovsky made it clear that the Department of Justice would focus its attention on guarding against voter fraud, and even went so far as to suggest that matters involving the rights of voters to participate in elections "might best be left to volunteers." According to von Spakovsky, the best thing for elections is to station "poll watchers everywhere in the country throughout the whole election process."

With all those volunteer poll watchers challenging each and every voter to make sure that they are casting a valid ballot, our elections would surely be a chaotic mess, long lines would likely ensue, and voters would become discouraged from voting or intimidated. Such a result would surely be unfortunate for our democracy, but it is very much in line with von Spakovsky's career goals, which have consistently sought to make voting more difficult for voters like you and me.

Commissioner von Spakovsky's overtly partisan actions disqualify him from confirmation to a post he never deserved to be recess-appointed to in the first place. His efforts to make it harder for Americans to vote are long standing. This is not a close call. The Senate Rules Committee should reject his nomination to the FEC.

The New York Times
nytimes.com

April 29, 2008

Decision Is Likely to Spur Voter ID Laws in More States

By IAN URBINA

WASHINGTON — Far from settling the debate over voter identification, the Supreme Court ruling on Monday upholding Indiana's voter ID law is likely to lead to more laws and litigation, voting experts said.

Lawmakers in at least four states may seek to pass stricter regulations in the next year or so, the experts said. In response, voting rights groups might sue on behalf of individuals or groups in an effort to exempt them.

"The court's opinion is likely to perform the same function for the photo ID debate as the Pennsylvania primary did for the Democratic presidential nomination — hardening positions while doing little if anything to illuminate a path to resolving the conflict," said Doug Chapin, director of the Pew Center on the States Web site, electionline.org.

Voting experts said the decision would have limited effects on voting in the primaries and presidential election because most state legislatures were not in session, could not call emergency sessions or did not have the makeup to pass ID bills.

Voting experts predict legislative movement this year or next, especially in states with Republican legislative majorities and Republican governors.

Some critics of the decision said they feared that it would add to confusion at the polls.

"Even before the verdict, we saw confusion surrounding voter ID laws, and now voters and poll workers are more likely to think the Supreme Court just approved some national voter ID law, which indeed they did not," said Jonah H. Goldman, director of the National Campaign for Fair Elections for the Lawyers' Committee for Civil Rights Under Law.

Mr. Goldman said that poll workers might ask for unrequired identification and that citizens might not vote because they mistakenly thought that they could not do so if they did not have certain forms of identification.

In the Indiana primary next Tuesday, little will change, because the ID law has been in force. Twenty-five states require identification at the polls for all voters, including seven that require or can request photo ID. This year, Texas and at least nine other states, including California, Illinois, New Mexico and Virginia, have considered photo ID measures.

The ruling is likely to set off fierce debates where illegal immigration is a hot issue, experts said. In Texas, debate over photo ID in 2007 paralyzed the State Senate for weeks before the bill was rejected. In response

to the new ruling, the Republican-controlled Legislature will probably be recalled to work on a new ID measure, voting experts said.

In Oklahoma, an identification measure will be debated shortly, and in Kansas, voting experts predict that lawmakers may act because the governor vetoed an ID bill last year.

Missouri lawmakers, who are in session, are likely to be encouraged in an effort to put the question on the ballot. In 2006, the Missouri Supreme Court struck down an ID law.

Voting experts said a bill pending in Florida to make its ID law more restrictive was now more likely to pass.

Advocates for tighter laws called the decision a resounding affirmation.

"This decision not only confirms the validity of photo ID laws, but it completely vindicates the Bush Justice Department and refutes those critics who claimed that the department somehow acted improperly when it approved Georgia's photo ID law in 2005," said Hans A. von Spakovsky, a former member of the Federal Election Commission and a former Justice Department official.

Mr. von Spakovsky's confirmation to a regular term on the election panel has stalled in the Senate because of his support for voter ID laws.

Although voting experts said the decision supported the law that Georgia passed in 2005, it did not necessarily substantiate an ID law being challenged in Arizona.

"There is still a good chance that the Arizona law could be overturned in the courts because it has a proof-of-citizenship requirement for voter registration, and the Supreme Court decision did not weigh in on the proof-of-citizenship issue," said Mr. Goldman, whose group is involved in the Arizona case.

Wendy R. Weiser, a law professor at the Brennan Center for Justice at the New York University School of Law, said it was important to remember that the ruling did not give the states a blank check to pass restrictive ID laws.

"The court specifically left open the possibility of lawsuits against ID laws that burden specific groups of citizens like older voters, poor voters and students," Professor Weiser said, "and all the legislation we have seen to date do, in fact, burden those groups."

But, she added, in putting virtually all the burden of proof on plaintiffs seeking to argue that laws illegally restrict their voting rights, the decision makes it much tougher for voting rights groups to prevail in court.

Copyright 2008 The New York Times Company

Blacks Facing Unfair Obstacles

July 30, 2004

By Alaina C. Beverly

For black and brown voters in Florida, participation in our democracy must seem like a game of high-stakes roulette in which the state keeps stacking the odds against them.

In the latest twist, Florida reacted to a state court ruling -- which required it to help individuals who have completed their sentences to navigate the process to restore their voting rights -- by complicating that process. The state eliminated a form that former offenders are to mail to the Office of Executive Clemency in Tallahassee to initiate the restoration process. Now individuals must wait for notification from the state that they have not qualified for automatic restoration of right before they can contact the clemency office to request a hearing.

This is the latest barrier erected by Florida to the full participation of its black and brown citizens.

Before the 2000 elections, Florida used inaccurate criteria and flawed methods to create a "felon purge" list that led to the unlawful disfranchisement of thousands of voters, mostly African Americans. At least 2,000 of the individuals on the purge list were convicted in other states but had served their sentences and already had their voting rights restored by law (in those other states). Nevertheless, they were scrubbed from Florida's voting rolls. Many individuals who had never been convicted of a crime were on the list because of faulty methods of matching names on the voter lists with names of individuals convicted of felony offenses.

In 2001, the NAACP Legal Defense and Educational Fund and a coalition of civil-rights organizations filed a lawsuit challenging many of Florida's voting procedures, under federal laws including the Voting Rights Act. That suit questioned the ways in which Florida identified persons potentially ineligible to vote because of a prior felony conviction. The NAACP vs. Harris case led to a settlement that required Florida to match name and race of individuals on the voter rolls and criminal conviction lists before including them on the felon purge list.

Purge list was inaccurate

It only recently came to light that, at the time of the settlement, Florida officials knew but did not reveal that its criminal convictions database did not include race information for Latinos. As a result, the purge list prepared in accordance with the settlement procedure was under-inclusive and inaccurate. In addition, as The Herald reported on July 2, "at least 2,119 of those names... shouldn't [have been] on the list because their rights to vote were formally restored through the state's clemency process."

Florida state officials finally agreed to withdraw the flawed purge list for the November elections. But county election supervisors are still required by state law to remove from the voting rolls persons convicted of felonies who have not had their rights restored. Recent reports indicate that, with the election rapidly approaching and little guidance from the state, some supervisors are relying on the flawed state list anyway, in possible violation of federal law.

Excluding minority voters

Despite its promises to improve election procedures, losing another lawsuit over its clemency process, receiving continued criticism from civil-rights groups and being the subject of a series of embarrassing news stories, Florida continues to adopt and implement election procedures that exclude minority voters in general -- and African Americans in particular -- from participating fully in its political process. The right to vote is a fundamental part of citizenship, regardless of sex, class, color or partisanship that cannot be abridged by state agencies or local election officials.

We will enforce the protections available under federal law to remove the barriers that Florida keeps stacking up, so that all eligible voters, and especially citizens of color, have equal access to the democratic process.

Alaina C. Beverly is an Assistant Counsel at the NAACP Legal Defense and Educational Fund, Inc.

Printed from www.naacpldf.org
http://www.naacpldf.org/content.aspx?article=334

Copyright © 2006 NAACP Legal Defense and Educational Fund, Inc. All rights reserved.